

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

vs.

IGNACIO ESTEBAN RIMER,  
HOWARD NED MCMONIGAL, III,

Defendants.

NO. CR-2007-3959

APPEAL NO.

2 CA-CR 2009-0100

BEFORE: THE HONORABLE GUS ARAGON  
Judge of the Superior Court  
Division 30

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
CONTINUED HEARING ON PENDING MATTERS AND MOTIONS

November 26, 2008

Tucson, Arizona

REPORTED BY:

Kathryn A. Lorenz, RPR  
Certified Reporter No. 50738

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 RICHARD M. WINTORY, ESQ.  
4 KELLIE L. JOHNSON, ESQ.  
5 PIMA COUNTY ATTORNEY'S OFFICE

6 FOR DEFENDANT McMONIGAL:

7 CORNELIA W. HONCHAR, ESQ.

8 FOR DEFENDANT RIMER:

9 JILL E. THORPE, ESQ.  
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1 WEDNESDAY, NOVEMBER 26, 2008, 1:02 P.M.

2 P R O C E E D I N G S

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4 THE COURT: We are back on the record on  
5 State versus Howard McMonigal and Ignacio Rimer. Show  
6 that Counsel are all present; Defendants are present,  
7 in custody.

8 Counsel, I wanted to take up one matter that  
9 we had discussed yesterday to see if we can nail it  
10 down before we move on. On the issue of the testimony  
11 of Officer Harn -- or Hearn, H-e-a-r-n, has Defense had  
12 a chance to interview the officer?

13 MS. THORPE: No, Judge, we haven't since  
14 yesterday, obviously.

15 THE COURT: All right.

16 MS. THORPE: No.

17 THE COURT: I just didn't remember if you  
18 had already interviewed him before yesterday's hearing.

19 MS. THORPE: No.

20 THE COURT: And is he available to interview  
21 before trial or early in the trial proceedings?

22 MS. HONCHAR: Your Honor, we were all  
23 actually discussing some way to address the interview  
24 issues, and I think we have a consensus, if that is  
25 convenient to the Court.

1 MR. WINTORY: And I drew the short straw.

2 THE COURT: Say that again, sir.

3 MR. WINTORY: I drew the short straw.

4 THE COURT: All right.

5 MR. WINTORY: Judge, what we'd like to --  
6 we've got a number of these interviews. What we'd like  
7 to do is, I think most of us suspect -- the lawyers,  
8 not you, of course -- but that we can get our jury  
9 picked but it's going to take a couple of days, a  
10 Tuesday, Wednesday. What we'd like to do would be to  
11 use Thursday morning for us to knock out these  
12 interviews; come back in and any fussing that we need  
13 to have to resolve that with you, Thursday afternoon.  
14 So do openings on Friday so that everybody knows, as  
15 best we can know at that stage, what's coming in and  
16 what's not coming in, and at least what the ground  
17 rules are for stuff coming in or out. And I'm to stop  
18 because you haven't thrown anything at me yet.

19 THE COURT: All right. I certainly have no  
20 problem with any of that, Counsel. What I'd like to do  
21 is make sure that Officer Hearn is one of the people  
22 that you have in mind.

23 MR. WINTORY: Yes, sir.

24 THE COURT: And if that gets taken care of,  
25 I'm going to give defense counsel leave to argue if

1 there's any prejudice in the delay of the disclosure of  
2 Officer Hearn, any -- in other words, would there have  
3 been any change in trial strategy or trial preparation.  
4 And then we'll resolve -- at least with respect to  
5 Officer Hearn, I'll try to resolve whether or not he is  
6 to be precluded or permitted as a witness.

7 Anything further on Officer Hearn at this  
8 time?

9 MR. WINTORY: No, Judge.

10 MS. THORPE: No, Judge.

11 MS. HONCHAR: Just that, actually, I join.  
12 I had initially said that I was -- I had not objected,  
13 but Ms. Thorpe raised an objection, and I am, for the  
14 record, stating my objection. The Court granted me  
15 leave to think about this, and so I'm objection -- and  
16 I join Ms. Thorpe's objection as to Officer Hearn.

17 THE COURT: All right. Thank you, Counsel.

18 So we'll move on from there. Would one of  
19 you please remind me what we were going to pick up with  
20 when we came back today?

21 MS. HONCHAR: It was my turn in this Wheel  
22 of Fortune.

23 MS. THORPE: Judge, before we get started,  
24 can we have Mr. Rimer --

25 THE COURT: Oh.

1 MS. THORPE: -- just one arm?

2 THE COURT: All right. As to both  
3 defendants, it's ordered that they both be allowed to  
4 have freedom of movement with respect to their right  
5 hands so that they can make notes in assisting counsel  
6 in their own defense.

7 Counsel, you're going to have to bear with  
8 me as I plow through the paperwork here. I don't mean  
9 that in a disparaging way. It just takes me a minute.

10 MS. HONCHAR: That's the way we all feel,  
11 your Honor.

12 THE COURT: Where are you, Ms. Honchar?

13 MS. HONCHAR: I'm on the motion in limine to  
14 preclude all hearsay statements and Defendant  
15 McMonigal's prior bad acts, to which the State has  
16 filed a response.

17 THE COURT: All right. Well, let me first  
18 tell you that, with respect to hearsay statements, I  
19 don't know specifically what's going to be offered, and  
20 those are generally issues that are taken up ad hoc by  
21 the trial judge. But I appreciate that you want to  
22 give me a heads-up on things.

23 As to other bad acts --

24 MS. HONCHAR: Yes, we have other bad acts.

25 And --

1 THE COURT: Ms. Honchar, were there specific  
2 hearsay statements that you think don't --

3 MS. HONCHAR: Well, I think --

4 THE COURT: -- fall under the realm of those  
5 things that come up during the trial and get ruled  
6 on --

7 MS. HONCHAR: What I'd like to do is --

8 THE WITNESS: -- at the time they come up?

9 MS. HONCHAR: If I can -- excuse me, sir.  
10 What I would like to do is go through this in an  
11 orderly process so that we can all follow along and the  
12 Court will have a document in front of it. And I  
13 request the Court, if it please, to turn to page 2 of  
14 my motion. It is broken up into various parts: A, B,  
15 C, D, E, F, and G.

16 Ms. -- the State has provided a response,  
17 and as a result of this motion, we have narrowed some  
18 of the issues because there is agreement. And so my  
19 thought is, if we follow along with my motion, we will  
20 all have a record and this will facilitate the Court's  
21 decision-making during the proceeding.

22 THE COURT: All right. I'm with you now,  
23 Ms. Honchar.

24 MS. HONCHAR: Sure.

25 THE COURT: I'm on page of 2 of your motion.

1 MS. HONCHAR: Thank you. As -- these are --  
2 our position is that these, of course -- many of these  
3 are prior bad acts. They are subject to 404(b). They  
4 are required to be established by clear and convincing  
5 evidence. And cited in the memorandum is State versus  
6 Terrazas for the proposition that the evidence of other  
7 acts must be proved by clear and convincing evidence  
8 that the prior acts were committed by the defendant and  
9 that the acts themselves were committed.

10 And that's State versus Terrazas,  
11 T-e-r-r-a-z-a-s, for the court reporter.

12 The first item, that is A, bullet: All  
13 testimony or other evidence that Mr. McMonigal made  
14 other people disappear.

15 It's our position that this is a highly  
16 inflammatory statement. There is no corroborative  
17 proof that Mr. McMonigal made any other person  
18 disappear or that he was involved in any murders of --  
19 or, you know, extravagant kidnappings of this sort. I  
20 think it was perhaps just a typographical error by  
21 Ms. Johnson -- I'm sorry -- by Mr. Wintory -- I think  
22 he was the author of this -- that Mr. McMonigal was  
23 charged with conspiracy to commit murder. And as the  
24 Court knows, the grand jury never indicted him for that  
25 act, and that count as to Mr. McMonigal was



1 specifically dismissed because there was no evidence.

2 Now, to say that Mr. McMonigal makes people  
3 disappear and to have that come into the Court and to  
4 the jury, what they are going to think is, oh, my gosh,  
5 I mean, we've got these kidnappings of these women and  
6 then all of a sudden he makes other people disappear.  
7 There is no corroborative evidence. Detective Musick  
8 never was able to verify or establish any evidence  
9 that, one, Mr. McMonigal made someone disappear or even  
10 who the person was. There is some vague allusion to  
11 some named person named Christina (phonetic), but there  
12 is no follow-up. There are only hearsay statements or  
13 the statements of these women, principally Ms. Knudsen.  
14 And Ms. Knudsen has already recanted her entire story  
15 in terms of the kidnapping and rapes, and that is a  
16 significant issue. And, therefore, to allow any  
17 testimony that Mr. McMonigal makes people disappear is  
18 inadmissible as a prior bad act because there is no  
19 clear and convincing evidence.

20 Now, I suspect that it will be Mr. Wintory's  
21 argument that this is an enterprise and, as he said  
22 yesterday, indicted in this matter other unknown  
23 persons. Well, that's not due-process notice. You  
24 can't just bring in somebody and say, oh, well, that  
25 person was involved in a particular transaction and

1 that's the other unknown person. So -- and I think  
2 that's part of the thing that they are trying to get at  
3 here, and I think it's inflammatory and highly  
4 prejudicial.

5 Mr. -- the State has agreed -- moving on to  
6 "A," second bullet -- all testimony that --

7 (Cell phone interruption.)

8 MR. WINTORY: I apologize. That's mine.

9 I apologize, Counsel.

10 MS. HONCHAR: No, that's okay. Do you want  
11 to take the call?

12 MR. WINTORY: Not at all. No.

13 MS. HONCHAR: Okay.

14 -- that some unknown female was given heroin  
15 and loosened up. The State has already agreed that  
16 that statement, or any evidence related to that, would  
17 not come in. So that is a good thing and the Court can  
18 mark that as out.

19 THE COURT: Mr. Wintory, do you agree with  
20 that?

21 MR. WINTORY: Judge, is our brief -- do you  
22 have a copy of our response, Judge?

23 THE COURT: I do, but I'm not sure that I  
24 want to flip back and forth here. If you tell me --

25 MR. WINTORY: You bet. Yeah. We're not --

1 we're agreeing on -- Judge, if you've got her pleading,  
2 that second bullet, is -- we're not offering that  
3 evidence --

4 MS. HONCHAR: If I may, sir. What I have  
5 done --

6 THE COURT: I just wanted to confirm that  
7 with him --

8 MS. HONCHAR: Okay.

9 THE COURT: -- before we move on.

10 MS. HONCHAR: I -- I will represent to the  
11 Court and make this affirmation that if I state that  
12 the State has said that this is out, I have thoroughly  
13 checked it against the State's document and -- and that  
14 I am making a representation to the Court that this is  
15 an item that -- upon which we have reached an  
16 agreement.

17 THE COURT: All right. I understand that.

18 Mr. Wintory, if you find that Ms. Honchar  
19 has misunderstood, point that out at the time so that I  
20 can make sure that I make good notes.

21 MR. WINTORY: Yes, your Honor.

22 THE COURT: Go ahead, Ms. Honchar.

23 MS. HONCHAR: Certainly. Testimony that  
24 Mr. McMonigal was involved in human smuggling.

25 This is, again, an allegation or a

1 statement, a series of statements made by two of the  
2 women. However, again, it doesn't pass the clear and  
3 convincing standard of proof that Mr. McMonigal did it  
4 and that this act of human smuggling actually occurred.

5           There are vague statements made that some of  
6 the women would go to Arivaca, to Sasabe, to Cascabel;  
7 they would drive, allegedly, stolen cars. This is  
8 principally Ms. Hosler who makes these claims sometime  
9 in 2004. There is no evidence that -- who the persons  
10 were, how many they were, where they were dropped off,  
11 where they were picked up. There is nothing that backs  
12 it up with any information, for example, from border  
13 patrol. It is just a statement that I did this on a  
14 particular day a couple of years ago, four years ago,  
15 and I think it does not have the clear and convincing  
16 evidence.

17           Now, Ms. Hosler is an unindicted  
18 co-entrepreneur in this matter, but I believe that that  
19 is still insufficient to allow the Court to bring in  
20 this particular kind of information without, again,  
21 clear and convincing evidence. The mere fact that  
22 there is an enterprise alleged here does not grant a  
23 license to the State to bring in anything that it wants  
24 to. It does not destroy the fundamental principles of  
25 404(b) and the rules of evidence as to prior bad acts

1 that -- because that's an absurd conclusion.

2 I know that the Court had thought of --  
3 because I have read over some of the prior hearings,  
4 your Honor, and the Court was considering reviewing  
5 Ninth Circuit law. The federal RICO statute is a model  
6 of clarity in comparison to the loosely worded nature  
7 of the Arizona RICO statute. It requires a group of  
8 five, clearly two, predicate acts. It requires a great  
9 many other things. Now, I'm certainly aware of the  
10 fact that in an enterprise case the co-conspirator  
11 statement admission applies, but I still believe and  
12 suggest to the Court that fundamental rules of  
13 admissibility do now outweigh the mere allegation of a  
14 sweeping, vaguely described enterprise.

15 As to item bullet -- Item A: All testimony  
16 that Ms. McMonigal sells girls to the Mexicans.

17 Again, there is no corroborative evidence of  
18 who the Mexicans are, when they ever came to Tucson to  
19 be sold. Ms. Knudsen is the person who claims that she  
20 was sold to Mexicans on four occasions. In a defense  
21 interview freely given, at least to my investigator,  
22 all right -- and I can say that with absolute  
23 assurance -- and to Ms. Thorpe's investigator, freely  
24 given, with full appraisal of the panoply of  
25 constitutional protections, she said that I went on

1 four dates with Mexicans, with a Mexican, a 17-year-old  
2 Mexican national, it was a date, I wasn't sold, I  
3 enjoyed part of it, some it I didn't. This Mexican  
4 national wanted to actually -- you know, she thought  
5 that he liked her and there would be a relationship.

6 There are other vague allegations of --  
7 Ms. Foley makes strange allegations of selling girls to  
8 the Mexicans. So does Ms. Kopp. This is rumor,  
9 innuendo. Again, where is the clear and convincing  
10 evidence with which we have been supplied in order  
11 to -- for this Court to make the -- to make -- in order  
12 to make the Court be able to make the threshold finding  
13 that the Defendant -- one, that the Defendant committed  
14 the act and, two, that an act was actually committed?  
15 And that is the problem with selling the girls to the  
16 Mexicans.

17 Testimony -- we're going, moving on to the  
18 next bullet, sir, under "A," evidence that  
19 Mr. McMonigal steals or sells stolen cars.

20 Again, as to whether Mr. McMonigal actually  
21 steals a car, I mean, there is a legal theory of theft,  
22 but the question, the statement is does he steal a car.  
23 There is no clear and convincing evidence that  
24 Mr. McMonigal actually went out and actually stole a  
25 car.

1 THE COURT: Ms. Honchar, you know that you  
2 can have liability-by-accomplice theory, so why don't  
3 you make a little bit broader argument. If you think  
4 there is no accomplice liability here, then tell me  
5 that. But --

6 MS. HONCHAR: All right.

7 THE COURT: -- if all you're going to say is  
8 they can't prove he went out and took the car, that  
9 doesn't exclude stealing a car --

10 MS. HONCHAR: All right. Well, there's  
11 no --

12 THE COURT: -- as an accomplice.

13 MS. HONCHAR: And I understand that. Ms. --  
14 I'm sorry if I interrupted the Court.

15 THE COURT: No. No. I'm just -- I know  
16 that we've got a lot of ground to --

17 MS. HONCHAR: Right.

18 THE COURT: -- cover here and you've got,  
19 what, maybe a hundred bullet points here.

20 MS. HONCHAR: Well, actually, I don't. You  
21 will see, your Honor, that we agree to practically all  
22 page 3. So these are --

23 THE COURT: So tell me why your client is  
24 not arguably liable under an accomplice theory of car  
25 theft.

1 MS. HONCHAR: Because there is no clear and  
2 convincing evidence that --

3 THE COURT: Well, how do I know that? I  
4 haven't heard any evidence at all. I mean, how can I  
5 make rulings on these issues that I don't -- that I  
6 haven't heard the testimony on?

7 MS. HONCHAR: Your Honor, uh...

8 THE COURT: Are you asking for a clear and  
9 convincing evidentiary hearing? Is that what you want?

10 MS. HONCHAR: Well, this is essentially what  
11 we are doing here. I'm not --

12 THE COURT: Well, no, not really, because I  
13 haven't heard any evidence. I've heard a lot of  
14 argument.

15 MS. HONCHAR: All right.

16 THE COURT: Until I hear evidence -- if you  
17 think that there needs to be a finding of clear and  
18 convincing evidence, then I need to hear some evidence  
19 and find out --

20 MS. HONCHAR: All right.

21 THE COURT: -- whether it's clear and  
22 convincing.

23 MS. HONCHAR: In order to facilitate this  
24 and I wish to accommodate the Court as well as I  
25 possibly may. All right? So would the Court wish to



1 take up these disputed items, then, before the --  
2 before the admission of the evidence and reserve and  
3 instruct us all not to make various statements at  
4 opening --

5 THE COURT: Well, no, I'm not going to do  
6 that.

7 MS. HONCHAR: Okay. It's about -- this  
8 is --

9 THE COURT: What I -- what I want to do is  
10 ask you if you have any case law that supports the  
11 theory that if you have a criminal enterprise, that  
12 everything that is arguably encompassed in the criminal  
13 enterprise requires a 404(b) showing by clear and  
14 convincing evidence.

15 MS. HONCHAR: That is exactly my position,  
16 your Honor.

17 THE COURT: Do you have --

18 MS. HONCHAR: I believe --

19 THE COURT: -- any case law that supports  
20 that?

21 MS. HONCHAR: I believe this is not -- this  
22 is not an issue that has been tested --

23 THE COURT: Okay.

24 MS. HONCHAR: -- in terms of --

25 THE COURT: Well, let me tell you that --

1 MS. HONCHAR: -- the enterprise.

2 THE COURT: -- my ruling will be, unless you  
3 demonstrate case law to the contrary, is that if there  
4 is a criminal enterprise that arguably encompasses  
5 these acts, then these acts are admissible under the  
6 State's theory of criminal enterprise without a 404(b)  
7 clear and convincing showing.

8 MS. HONCHAR: And I -- I respectfully,  
9 sir -- thank you very much for your ruling. I  
10 respectfully disagree.

11 THE COURT: I understand.

12 MS. HONCHAR: I think --

13 THE COURT: If you didn't disagree, we  
14 wouldn't be standing here talking about it, so you  
15 didn't even have to say that.

16 MS. HONCHAR: Right. Well, I'm just saying  
17 I -- I -- but I do so with utmost respect, sir.  
18 That's --

19 THE COURT: I understand that, too.

20 MS. HONCHAR: -- what I wanted to make  
21 clear, that I -- I take the ruling with the grace with  
22 which it was handed to me.

23 Now --

24 THE COURT: Let me just ask the prosecution.  
25 Is it the State's theory that these alleged acts of

1 human smuggling, selling girls to Mexicans, stealing,  
2 and selling stolen cars are part of the  
3 criminal-enterprise theory?

4 MR. WINTORY: Yes, your Honor.

5 THE COURT: All right. Then I think the  
6 ruling that I made follows that theory, at least  
7 encompasses it.

8 So, Ms. Honchar, go ahead.

9 MS. HONCHAR: All right. There -- let's go  
10 to -- well, I -- I mean, I -- we have Item B, testimony  
11 that Mr. McMonigal possessed --

12 THE COURT: Did you need to skip the -- or  
13 want to skip the last two bullets on Item A?

14 MS. HONCHAR: Well, all of the evidence that  
15 other women named in the indictment, there were other  
16 women other than those named in the indictment were  
17 victimized by Mr. McMonigal. I mean, this, I think, is  
18 an extraordinary expansion. We have no notice.

19 THE COURT: I'm trying -- I'm trying to  
20 follow you here. Are you at the bullet right before  
21 "steals and sells stolen car"?

22 MS. HONCHAR: No, sir.

23 THE COURT: Okay. Have you skipped over  
24 that one?

25 MS. HONCHAR: Right, because as to all

1 testimony that Mr. McMonigal has people and family that  
2 followed the alleged victims when they aren't with  
3 Mr. McMonigal, the State has already agreed that that  
4 would be precluded.

5 THE COURT: All right. Then --

6 MS. HONCHAR: All right?

7 THE COURT: Then you need to let me know  
8 when you guys have agreed to something.

9 MS. HONCHAR: I'm sorry, sir. My error.

10 THE COURT: How about the bullet following  
11 that, the last bullet in paragraph A?

12 MS. HONCHAR: All right. That women, other  
13 women than those named in the indictment were  
14 victimized by Mr. McMonigal.

15 Again, this, I think, is a very serious --  
16 this would inflame the jury. I want --

17 THE COURT: Counsel, I have to agree with  
18 you on this one, that this looks like a 404(b) item.

19 Does the State disagree with that?

20 MR. WINTORY: We do, Judge. And it might be  
21 very -- I think it becomes very clear. If Ms. Honchar  
22 would just identify for the court exactly what is the  
23 testimony that she's referring to, what's the  
24 information, what's the event, and I think that will  
25 answer the Court's question, the concern.

1 THE COURT: All right. Go ahead,  
2 Ms. Honchar. Can you specify that?

3 MS. HONCHAR: Certainly. Anything relating  
4 to Sonya Beiswenger, B-e-i-s-w-e-n-g-e-r; Glorya Edith  
5 Smith, Katie Fought; Teresa --

6 THE COURT: Katie what?

7 MS. HONCHAR: Fought, F-o-u-g-h-t.

8 -- Teresa Myatt; Carla Welch. But, of  
9 course, that's an issue which we are going to -- the  
10 Court has reserved all of its rulings, so that is  
11 a moot -- not a moot but certainly a deferred issue.

12 There are other -- there's a woman named  
13 Christina who is mentioned. There are other women who  
14 are --

15 THE COURT: Does Christina have a last name?

16 MS. HONCHAR: No. I mean, not that I know  
17 of.

18 THE COURT: Is the State contending that  
19 they are going to offer evidence about Christina with  
20 no last name?

21 MR. WINTORY: You bet, Judge. And if --

22 THE COURT: Tell me -- tell me who that is.  
23 Who is Christina?

24 MR. WINTORY: Okay. Well, that's -- that's  
25 the point. But when -- we don't know -- Christina is

1 not identified by the witnesses who witnessed the  
2 events involving Christina. And if Ms. Honchar will  
3 just describe for the Court what's the testimony, not  
4 just the name, the testimony of the event.

5 And I can help you. The Sonya, Glorya,  
6 we're not offering. Katie Fought, we would offer,  
7 except Katie Fought is a fugitive right now and we  
8 don't expect to have her at trial.

9 THE COURT: What was Sonya's last name?

10 MS. HONCHAR: B-e-i-s-w-e-n-g-e-r.

11 THE COURT: You're not offering testimony  
12 about Ms. Beiswenger?

13 MR. WINTORY: That's correct. And Glorya --

14 THE COURT: What's Glorya's last name?

15 MS. HONCHAR: Smith. It's Glorya,  
16 G-l-o-r-y-a, Edith Smith. It's -- these names,  
17 your Honor, appear at page 4 of my memorandum.

18 THE COURT: Thank you.

19 Go ahead, Mr. Wintory. Tell us who else we  
20 can rule out here.

21 MR. WINTORY: Katie Fought. We're not, to  
22 my mind, saying we're not offering it. If Katie Fought  
23 gets arrested and is available, we believe it would  
24 satisfy the Court's criteria. But there's no point in  
25 fussing about it because right now she's a fugitive; we

1 don't expect to have her.

2 THE COURT: All right. So until further  
3 notice, we can rule out Katie --

4 MR. WINTORY: You bet.

5 THE COURT: -- Katie Fought.

6 MR. WINTORY: You bet. If we get her into  
7 custody, we'll advise you and have the Court make your  
8 ruling.

9 So the one that relates so far we're talking  
10 about is Christina, whose last name is not known to the  
11 witness. And, again, if we could just -- if  
12 Ms. Honchar could just describe for the Court what's  
13 the testimony that she's objecting to, I think it  
14 will -- it will sharpen the issue up.

15 THE COURT: All right. So we have  
16 Christina, we have Welch, we have Myatt. And I right  
17 so far?

18 MS. HONCHAR: Yes, we do.

19 THE COURT: Any other names we need to add,  
20 Ms. --

21 MS. HONCHAR: Yes.

22 MS. THORPE: Yes.

23 MS. HONCHAR: Excuse me. Go ahead,  
24 Ms. Thorpe.

25 MS. THORPE: I do want to add Cara Ingram

1 also.

2 THE COURT: Ingram?

3 MS. HONCHAR: That's where I was just going  
4 to next.

5 THE COURT: Who else?

6 MS. HONCHAR: There's a guy named  
7 Ralph Jessup.

8 MR. WINTORY: We don't know who that is.

9 MS. THORPE: Yeah, you do. He's on --

10 MS. HONCHAR: Yeah, you do.

11 MS. THORPE: He's on warrant status with  
12 Katie Fought.

13 THE COURT: Are you offering anything with  
14 respect to Mr. Jessup?

15 MR. WINTORY: We've not listed him as a  
16 witness. We have --

17 THE COURT: So until further notice, there  
18 will be no Mr. Jessup in the case.

19 MS. HONCHAR: We would also ask -- turning  
20 to page 4 of the 13 bullets that are there, sir -- any  
21 mention of Trevor Marquez, including statements that he  
22 was aware of any activity concerning the tor -- rape  
23 and torture. Apparently, I think the State at one  
24 point had thought of having Mr. Marquez come in and --

25 THE COURT: Are you offering anything on



1 Mr. Marquez?

2 MR. WINTORY: Well, there are two parts to  
3 what she's saying, Judge: Any mention of, and then  
4 statements that are clearly hearsay.

5 THE COURT: All right. Well, I don't know  
6 about mention of names. Names may come up. I'm not  
7 going to rule that anyone cannot mention a name. It  
8 depends on the context that the name is being mentioned  
9 in.

10 MS. HONCHAR: All right.

11 THE COURT: So if you are going to mention  
12 Mr. Marquez's name, how are you going to mention it?

13 MR. WINTORY: Mr...

14 THE COURT: She says "Marquez" --

15 MR. WINTORY: Oh, Marquez.

16 THE COURT: -- I'm saying "Marquez."

17 MR. WINTORY: Your Honor, I'm sorry. We  
18 don't -- I mean, she -- he is -- Trevor Marquez is  
19 Maggie Kopp, one of our -- one of our witnesses's  
20 boyfriends. He has some statements that would be rank  
21 hearsay, couldn't offer them, but, I mean, his name  
22 would come up --

23 THE COURT: As the boyfriend?

24 MR. WINTORY: -- as the boyfriend of  
25 Maggie Kopp. Judge, I mean, I understand the hearsay

1 rules and --

2 THE COURT: All right. Well --

3 MR. WINTORY: -- that's trial stuff.

4 THE COURT: Then as to Mr. Marquez, if his  
5 name comes up as a boyfriend or an ex-boyfriend, I'm  
6 not going to rule that out, Counsel.

7 MS. HONCHAR: And I have no -- I have no  
8 problem with that, sir. I think --

9 THE COURT: Okay.

10 MS. HONCHAR: -- that that's a correct  
11 ruling.

12 THE COURT: Well, then other stuff about  
13 Mr. Marquez, what he says, what he didn't say, whether  
14 it's hearsay, whether it's a 404(b) act, I'm not going  
15 to rule on those things today.

16 MS. HONCHAR: And that's fine, sir. What  
17 I'm trying -- the motion was styled not to force the  
18 Court to make preemptive decisions but to, one, see if  
19 we could find a common meeting ground with the State,  
20 and, two, to establish a checklist for the Court so  
21 that it could more orderly handle these matters instead  
22 of the, you know, shotgun, somebody comes up --

23 THE COURT: All right. I appreciate that.  
24 What is the --

25 MS. HONCHAR: And I know the Court likes to

1 be prepared for --

2 THE COURT: What is the story on Christina  
3 that you object to?

4 MS. HONCHAR: Everything. I mean, of  
5 course --

6 THE COURT: Okay. So now you heard it,  
7 Mr. Wintory. She said "everything."

8 MS. HONCHAR: Right.

9 THE COURT: So tell me what you are going to  
10 proffer about Christina so that we can get things on  
11 the table here.

12 MS. HONCHAR: I think -- and I think  
13 Ms. Thorpe has something that might elucidate my  
14 position more clearly --

15 THE COURT: All right. Well, you said  
16 "everything." I'm going to let Ms. Thorpe say  
17 something about that.

18 MS. THORPE: Judge, one of the police  
19 reports that we received was that there was a Christina  
20 that was being held captive at Mr. McMonigal's house.  
21 And there was actually a police report generated about  
22 that. And so that's really the primary concern that we  
23 have, is that there was that police report. Police  
24 officers went out, they tried to investigate it,  
25 nothing came of it. After Mr. McMonigal and Mr. Rimer

1 were arrested in this case, Detective Musick, who is  
2 the lead detective in the case, tried to follow it up  
3 further. There was a lady whose name -- last name,  
4 frankly, escapes me. But they had a last name for  
5 Christina. He went and he talked to her. She could  
6 not -- and she was an associate of Mr. McMonigal's, the  
7 one that went to his trailer, and she denied being the  
8 Christine that had been kidnapped.

9 THE COURT: So are we saying "Christine" or  
10 "Christina"?

11 MS. THORPE: It -- it gets variously  
12 reported as --

13 THE COURT: Okay.

14 MS. THORPE: -- as either "Christine" or  
15 "Christina."

16 THE COURT: Well, let me just say that if  
17 what we have is a police report that says that  
18 Christina was held captive at Mr. McMonigal's or  
19 anyone's residence, if all there is, then that's not  
20 enough.

21 MR. WINTORY: And, Judge, I wouldn't -- we  
22 wouldn't offer that. That's why we're trying to find  
23 out what are the incidents that they are referring to.  
24 So for what Ms. Thorpe said, we have no intention of  
25 offering evidence relating to the incident she just

1 described. But these blanket rulings that are being  
2 sought, I -- we -- I can't agree with. But as to -- we  
3 have no intention of offering the specific events that  
4 Ms. Thorpe has referred to.

5 THE COURT: All right. Thank you.

6 MS. HONCHAR: And I will also point out,  
7 sir, that part of this motion is to elicit what the  
8 State's position might be for any of these issues  
9 raised and any of these names that came out.

10 Now, we also have Teresa Denise Myatt,  
11 turning to page 4, sir.

12 THE COURT: I have Myatt and Welch and  
13 Ingram.

14 MS. HONCHAR: Right. I mean, obviously,  
15 Welch is -- we're going -- the Court is going to defer,  
16 as it properly ruled yesterday. And we have  
17 Cara Ingram out already.

18 THE COURT: What do you mean, "we have  
19 Cara Ingram out"?

20 MS. HONCHAR: There was already an  
21 agreement. I just --

22 THE COURT: That's already agreed to?

23 MS. HONCHAR: Right.

24 MR. WINTORY: Ing...

25 MS. HONCHAR: Cara Ingram and Ralph Jessup.

1           THE COURT: All right. I hadn't scratched  
2 Ms. Ingram's name out. What have you agreed to with  
3 regard to her?

4           MS. HONCHAR: That there would be no mention  
5 of either her or --

6           MR. WINTORY: Judge, I am -- I just --

7           THE COURT: I didn't --

8           MR. WINTORY: -- I don't want --

9           THE COURT: I didn't hear that, Ms. Honchar.

10          MR. WINTORY: Every time, this motion, where  
11 they say -- where Ms. Honchar is acting -- asking the  
12 Court to order us to prohibit any mention of, we don't  
13 agree to that. Names are going to come up.

14          THE COURT: All right.

15          MR. WINTORY: We agree also that there is  
16 this -- there is a hearsay rule and other limitations.

17          THE COURT: All right. Ms. Honchar --

18          MS. HONCHAR: Well, specifically --

19          THE COURT: -- I'm not going to preclude  
20 mention of names just in and of themselves. But what  
21 is it about Ms. Ingram --

22          MS. HONCHAR: Well, that she was victimized  
23 by Mr. McMonigal. That is the second portion, sir.

24          THE COURT: And when did that -- when did  
25 that allegedly take place?

1 MR. WINTORY: Can I save time?

2 THE COURT: Sure.

3 MR. WINTORY: She's not a witness, so we're  
4 not again -- she's not going to be testifying about  
5 these events.

6 THE COURT: Is anyone going to testify that  
7 they saw anything happen to her?

8 MR. WINTORY: Well, that's what I -- if --  
9 that's what I'd to ask Ms. Honchar to try to identify.  
10 But we're not going to offer hearsay statements. We  
11 don't want to be precluded from her name coming up.

12 THE COURT: Well, her name may come up. But  
13 when you -- if you bring somebody in that says they saw  
14 this and that and the other happen to Ms. Ingram, and  
15 it's a potential 404(b) act, then I need to know about  
16 that --

17 MR. WINTORY: Sure.

18 THE COURT: -- in advance.

19 MR. WINTORY: And we don't -- we don't  
20 intend to offer anything like that. The difficulty we  
21 have is that there are some victims, some events that  
22 are described where the witnesses do not know the name  
23 of the person involved. Ms. Honchar has access to an  
24 important source of evidence. We don't. And so that's  
25 why it's normally incumbent on the party moving to

1 preclude evidence to at least identify what it is they  
2 are attempting to preclude without this everything, all  
3 of, any mention of.

4 THE COURT: Well, what I'm hearing so far  
5 about Ms. Ingram is that Ms. Honchar, and maybe  
6 Ms. Thorpe, too, are concerned that somebody is going  
7 to come in and testify that she was victimized by  
8 Mr. McMonigal and that it's going to spring up on them  
9 during the trial.

10 I'm going to make a ruling that that's not  
11 going to happen, that cannot happen. It's a potential  
12 other bad act that needs to be addressed outside the  
13 presence of the jury before the jury hears anything  
14 about it, whether it's in opening statement or in  
15 evidence.

16 MS. HONCHAR: Thank you, sir.

17 THE COURT: Anything further on Ms. Ingram  
18 or Ms. Myatt or Ms. Welch?

19 MS. HONCHAR: No, sir. Thank you very much.

20 THE COURT: All right. With respect to any  
21 individuals that were allegedly sexually or otherwise  
22 victimized by either of the two defendants, if they are  
23 not named in the indictment as victims, then the State  
24 is required to bring those incidents to the Court's  
25 attention so that the Court can make appropriate



1 rulings on what should come in and what should not.

2 MR. WINTORY: Yes, your Honor.

3 THE COURT: Any question about that?

4 MR. WINTORY: No. No.

5 THE COURT: All right. Thank you.

6 MS. HONCHAR: Thank you, sir.

7 Let me go back and turn the Court's  
8 attention to Items B. I believe the State has agreed  
9 as to the -- that McMonigal possessed grenades and  
10 military-issue weapons. I believe the State has said  
11 it doesn't intend to offer any evidence.

12 Am I correct on that, Mr. -- yes, is that  
13 the State does not intend to offer the evidence.  
14 That's found on page 4 of the State's response.

15 THE COURT: Thank you, Ms. Honchar.

16 MS. HONCHAR: The next bullet is testimony  
17 that Mr. McMonigal stole jewelry and other prop -- and  
18 other property to -- or from Jessica Foley's mother.

19 At this point, in order to expedite, sir,  
20 maybe if the witness wants to testify that items of  
21 jewelry were stolen from her, that's fine, but not to  
22 mention her mother. Because if Ms. Foley was in  
23 possession of the items, her mother's --

24 THE COURT: Well, I'm not going to rule that  
25 way, Counsel. If this is part of the State's

1 criminal-enterprise theory and they can prove it or  
2 offer valid evidence of it, whether if it's just --  
3 whether it's Jessica Foley's, her mother's, her  
4 grandmother's, her sister-in-law's, that's going to be  
5 fleshed out in the testimony. And I'm not going to  
6 tell any of the parties that they can't identify the  
7 owner of the property.

8 MS. HONCHAR: Thank you very much for your  
9 ruling, sir. I appreciate it. It clarifies my  
10 thinking.

11 Item C, sir, at the bottom of page 2: A  
12 shooting occurred at Cottonwood Lane on January 27,  
13 2007.

14 Again, my suggestion here -- first of all, I  
15 think there -- while there may have been a shooting,  
16 nobody knows why he was shot, what were the  
17 circumstances, whether anybody was ever charged, and I  
18 think that referring to this specific shooting event  
19 would just inflame the passions and prejudice the jury  
20 against Mr. McMonigal because -- and nobody has been  
21 charged with it.

22 Any number of things could have happened.  
23 And I suggest, and the State had offered, and as a  
24 rationale for including the shooting, that some of the  
25 witnesses needed a date by which to fix their

1 recollection of other events that occurred. So it's  
2 the date that is significant. And I suggest that we  
3 sanitize this. This is a common practice when things  
4 that are irrelevant to -- whether or not -- relevant to  
5 the principal issues here, and that the State be  
6 granted one opportunity to lead and to say turning your  
7 attention to January 27th, 2007, it's a fixed date, do  
8 you -- is there -- do you remember that date? Yes.

9 THE COURT: Where -- where -- where was the  
10 gunshot wound? What part of the body was it to?

11 MS. HONCHAR: His leg.

12 THE COURT: Right leg or left leg?

13 MS. HONCHAR: It was a through-and-through.  
14 Both legs.

15 THE COURT: Both legs?

16 MS. HONCHAR: Right.

17 THE COURT: Okay.

18 MS. HONCHAR: As I say, a  
19 through-and-through.

20 THE COURT: Legs. Okay. All right. Well,  
21 how about this? How about --

22 MR. WINTORY: Judge...

23 THE COURT: Go ahead, Mr. Wintory.

24 MR. WINTORY: Before we start redacting, we  
25 learned a lot more about this case after the Defendant

1 made available to us their witness Valorie Frasier  
2 (phonetic), and that really cleared this up.

3 THE COURT: Was she an eyewitness to any of  
4 this?

5 MR. WINTORY: She actually got the  
6 statements from the Defendant himself, Mr. McMonigal.

7 THE COURT: So she's going to say that  
8 Mr. McMonigal said X, Y, or Z --

9 MR. WINTORY: Right.

10 THE COURT: -- about the shooting?

11 MR. WINTORY: And what she's going to  
12 tell -- what she told us during an interview is that --

13 THE COURT: And that's Valorie Frasier?

14 MR. WINTORY: That's right, Judge.

15 And what Ms. Frasier told us in the  
16 interview that the defense -- when the defense made her  
17 available, is that Mr. McMonigal indicated he'd been  
18 shot by one of the -- of a group that Mr. McMonigal  
19 referred to as the barrio boys -- forgive my  
20 pronunciation -- that it was part of an ongoing dispute  
21 between Mr. McMonigal and the barrio boys, and that  
22 there were things that were going to have to be done  
23 about it.

24 Ms. Frasier went on to relate that when she  
25 was describing events as to when they occurred, that

1 this -- the before and after the shooting were points  
2 that she made reference to his having been shot as a  
3 point of reference. But it appears that the shooting  
4 was not a random part but, rather, it was part of the  
5 criminal activity and the interaction of  
6 Mr. McMonigal's criminal enterprise --

7 THE COURT: Well, how do you know that?

8 MR. WINTORY: What Ms. Frasier described in  
9 the defense interview is that the barrio boys were  
10 competitors in criminal activity. And I'm -- I'm -- of  
11 course these aren't the words --

12 THE COURT: All right. Well, let me just  
13 say this. This is a potentially very prejudicial  
14 event, and before I will allow anyone to talk about  
15 Mr. McMonigal being shot in the legs on January 27,  
16 2007, I'll need to have testimony from Ms. Frasier  
17 setting forth what it is he said, what she knows, how  
18 she knows it, and all of those particulars so that I  
19 can make an appropriate ruling as to whether or not the  
20 prejudicial effect of this shooting incident outweighs  
21 its probative value.

22 Because there are plenty of ways to sanitize  
23 this. For example, just asking the witness was this  
24 before or after Mr. McMonigal suffered an injury to his  
25 legs on January 27, 2007. And that's a pretty

1 prominent event, and you can -- you can alert your  
2 witnesses that when you ask them about that, then  
3 that's what you are talking about.

4 MR. WINTORY: Okay.

5 THE COURT: So if you bring in Ms. Frasier  
6 and you have her testify outside the presence of the  
7 jury that she knows enough about this event to make it  
8 significantly concrete so that it should be admissible,  
9 in spite of its potential prejudicial value, then I'll  
10 consider the State's position on that. But I will  
11 require her testimony outside the presence of the jury  
12 first.

13 MR. WINTORY: Judge, for time saving, would  
14 the transcript of the defense interview -- and I don't  
15 know if that will answer all the particulars you have.

16 THE COURT: No. No, it won't be enough.

17 MR. WINTORY: Okay.

18 THE COURT: I want to see her and I want to  
19 size her up. I want to know whether it looks like she  
20 is credible.

21 MR. WINTORY: Of course, our concern at this  
22 point is, now that she realizes the incriminating  
23 nature of the statements that she made in the  
24 interview, that we're not going to see the same person  
25 at trial that we did in the interview.

1 THE COURT: Yeah, I understand that concern.  
2 But I hope you understand my concern, and that's to  
3 provide a full and fair hearing to all of the parties  
4 as best I can.

5 MR. WINTORY: Okay, Judge.

6 THE COURT: And I can't do that without  
7 seeing Ms. Frasier and seeing what she has to say about  
8 it under oath.

9 MR. WINTORY: I understand the Court's  
10 ruling.

11 MS. HONCHAR: And I -- and I -- I will tell  
12 the Court that I have not given Ms. Frasier her  
13 statement, so --

14 THE COURT: Ms. McMonigal -- I'm sorry.  
15 Ms. Honchar, we don't need -- nobody is accusing you of  
16 anything.

17 MS. HONCHAR: Okay.

18 THE COURT: We just need to get moving on  
19 these.

20 MS. HONCHAR: Okay. I just wanted to give  
21 the Court that assurance, that I'm very mindful.

22 THE COURT: Well, you can give a witness  
23 their own statement. There's no problem with that.

24 MS. HONCHAR: Well, I haven't done it yet.

25 THE COURT: Well, you can.

1 MS. HONCHAR: Thank you, sir.

2 Let's turn to page 3. All of "D," all the  
3 bullets in "D," are out.

4 THE COURT: Are out?

5 MS. HONCHAR: Yes.

6 THE COURT: Thank you.

7 MS. HONCHAR: All of the bullet under "E" is  
8 out. "F" is out.

9 THE COURT: All of "F"?

10 MR. WINTORY: No.

11 MS. HONCHAR: Yes.

12 MR. WINTORY: No.

13 MS. HONCHAR: Oh. No. And I was just  
14 coming to that point. Thank you for correcting me. I  
15 appreciate it.

16 And "F" is the last bullet just above "G,"  
17 your Honor, on that page.

18 THE COURT: I see it.

19 MS. HONCHAR: Okay.

20 THE COURT: All of "F" except for the last  
21 bullet --

22 MS. HONCHAR: Right --

23 THE COURT: -- is out?

24 MS. HONCHAR: -- which is the fact that  
25 stolen guns were recovered from 2640 South Cottonwood



1 on August the 9th. The only thing I would ask for here  
2 is the gun that is actually tied to Mr. McMonigal that  
3 was stolen. And there are a plethora of weapons  
4 recovered. So if the -- I want to say that there are  
5 stolen guns, how does it relate to Mr. McMonigal or  
6 perhaps --

7 THE COURT: Is that his house?

8 MS. HONCHAR: It is.

9 THE COURT: All right. Well --

10 MS. HONCHAR: But the issue is "stolen."

11 THE COURT: All right. Well, I thought your  
12 request presumes that the gun was stolen.

13 MS. HONCHAR: No. I mean -- I mean -- I  
14 don't --

15 THE COURT: Well, you said with the fact the  
16 stolen guns were -- so, I mean, obviously --

17 MS. HONCHAR: You know, it's poorly worded.

18 THE COURT: Okay.

19 MS. HONCHAR: It's my fault.

20 THE COURT: Well, if there's a stolen gun  
21 and it's shown to be stolen and it's present at  
22 Mr. McMonigal's home on that day or any other day, I  
23 don't know why the State should not be permitted to --

24 MS. HONCHAR: I'm not --

25 THE COURT: -- present that.

1 MS. HONCHAR: And I -- I think that's  
2 absolutely true. It's just there's some guns that  
3 aren't stolen. So if they want to say --

4 THE COURT: All right. Well --

5 MS. HONCHAR: -- the stolen gun --

6 THE COURT: -- you didn't say -- you didn't  
7 say that in here. Are there non-stolen guns that we  
8 need to talk about?

9 MS. HONCHAR: In my estimation, there are,  
10 sir. And --

11 THE COURT: Which are they?

12 MS. HONCHAR: I don't know which ones they  
13 are.

14 THE COURT: All right. Well, if you don't  
15 know --

16 MS. HONCHAR: What --

17 THE COURT: -- then you need to figure that  
18 out and then we'll talk about it.

19 MS. HONCHAR: Thank you very much, sir. I  
20 will do that. And so the Court will reserve ruling on  
21 this. And that's probably --

22 MR. WINTORY: Well, Judge...

23 THE COURT: Well, I've already ruled. If  
24 they are stolen guns and they are at Mr. McMonigal's  
25 house, whether it's August 9, 2007 or a different date,

1 I'm not going to rule that that is irrelevant or  
2 inadmissible.

3 MS. HONCHAR: I agree, sir. I -- it's  
4 just -- I -- I will clarify this when -- when that time  
5 comes.

6 Now, let us go -- then we're turning on to  
7 page 4, we've gone through, already, sir, Cara Ingram,  
8 Ralph Jessup, Sonya Beiswenger, Glorya Smith,  
9 Katie Fought, Teresa Myatt. Carla Welch is deferred.  
10 We have already talked about Magic, which is the  
11 first -- which is the first bullet here. And when it  
12 comes to -- let's go to the second bullet. It's  
13 Jose --

14 MS. THORPE: It should be "Josh."

15 MS. HONCHAR: Josh?

16 MS. THORPE: Should be "Josh."

17 MS. HONCHAR: Okay. I'm sorry.

18 THE COURT: Second bullet?

19 MS. HONCHAR: Second bullet.

20 Any mention of Josh -- and for the court  
21 reporter, it's P-a-c-h-e-c-a-n-o -- concerning he's  
22 aware of rape and torture of women at the Cottonwood  
23 trailer, that somebody wants him dead, he's in fear of  
24 his life, any incidents of -- where Mr. Rimer -- well,  
25 I raised this, although it comes --

1 MR. WINTORY: Judge, we're just -- I'm sorry  
2 to interrupt, but we've covered this. We're -- again,  
3 we object to the prohibition of any mention of, but  
4 we're not offering these statements. We're not --  
5 they're hearsay.

6 THE COURT: All right. So Mr...

7 MR. WINTORY: Pachecano.

8 THE COURT: -- Pachecano's name might come  
9 up, but you're not offering any of these statements  
10 that are attributed to him in Bullet Point 2 --

11 MR. WINTORY: That's correct.

12 THE COURT: -- on page 4?

13 MR. WINTORY: He's not a witness. Those  
14 statements, as best I can tell, would be hearsay. If  
15 anything like that were to come up, of course we would  
16 approach and -- but, I mean, we're not expecting any of  
17 those.

18 THE COURT: All right. Ms. Honchar, does  
19 that take care of your concerns on that?

20 MS. HONCHAR: It -- it does, sir. And this  
21 is one of the things I'm extremely pleased for the  
22 opportunity to go through this.

23 Jayme -- and that is incorrectly -- she's  
24 Bullet 3. The Court has deferred ruling on that at  
25 this point, so that takes care of that.

1           We go down --

2           THE COURT: What's her last name?

3           MS. HONCHAR: It's "Newman." It's  
4 actually -- it should be -- for the Court, it should be  
5 J-a-y-m-e, last name N-e-w-m-a-n, as in Paul. And  
6 no -- the Court need take no action at this point  
7 because it's ruled on. We've already discussed that  
8 yesterday.

9           We have Ramon -- Juan Ramon Echeverria --

10          THE COURT: All right. I see that. Thank  
11 you.

12          MS. HONCHAR: I'm not real good at Spanish.

13          -- also known as "Turtle." Again, I think  
14 Mr. -- I think -- and also Joseph Lopez. I think --

15          THE COURT: Again, Counsel, if these names  
16 come up --

17          MS. HONCHAR: Exactly.

18          THE COURT: -- names come up.

19          MS. HONCHAR: But if -- and -- and we  
20 will --

21          THE COURT: If statements are going to be  
22 offered, they'll need to pass muster under the hearsay  
23 rules --

24          MS. HONCHAR: Right.

25          THE COURT: -- and confrontation rules and

1 whatever else may apply here.

2 MS. HONCHAR: And there's a statement by  
3 Detective Musick that two girls who were seized (sic)  
4 on a video in Mr. McMonigal's trailer appear to be  
5 juvies. There is no -- that's just, you know, an  
6 observation. I don't know --

7 THE COURT: Is the State offering that?

8 MR. WINTORY: No, Judge. It's -- no. No.

9 THE COURT: Okay. Well, then that's -- that  
10 request is granted. There's not to be any speculation  
11 about who -- who might be a juve that appears in a  
12 video, unless it's somebody that's obviously under  
13 ten years old.

14 MS. HONCHAR: And that greatly refines and I  
15 think will slow -- I mean will speed up the trial of  
16 this case. The Court will know where there are some  
17 hot buttons. And I think it puts us all in a posture  
18 to prepare our openings and our examinations. And I  
19 thank you very much for your patience.

20 THE COURT: Thank you, Counsel.

21 MS. HONCHAR: And I hope I --

22 THE COURT: And I appreciate the heads-up on  
23 these issues that you've brought to my attention.

24 MS. HONCHAR: Thank you, sir.

25 THE COURT: Let's see. Who is next? I've

1 lost track.

2 MS. JOHNSON: I think, Judge, we do need to  
3 take up -- I guess the only thing that I have that I  
4 think is important is actually a response, but it's the  
5 motion to dismiss County Three that was filed by  
6 Ms. Honchar. Maybe we can take that up.

7 THE COURT: All right. Let me see if I can  
8 find that.

9 MS. JOHNSON: I have some miscellaneous --

10 THE COURT: Is that the --

11 MS. JOHNSON: -- housekeeping matters.

12 THE COURT: -- VIN-number --

13 MS. JOHNSON: Yes.

14 THE COURT: -- motion?

15 All right. I remember that motion.

16 Ms. Honchar, this is your motion; is that  
17 correct?

18 MS. HONCHAR: Yes.

19 THE COURT: All right. Go ahead, ma'am.

20 MS. HONCHAR: Thank you, sir. There were a  
21 variety of vehicles at Mr. McMonigal's trailer or in  
22 the environs. And the indictment, the specific  
23 indictment, is possession of a motor vehicle with an  
24 altered serial number, and it states, as I set forth  
25 here, that he possessed a motor vehicle. A motor

1 vehicle. And what I'd like to clarify here is the  
2 charge in the indictment is only as to one motor  
3 vehicle.

4 THE COURT: Any -- any --

5 MS. HONCHAR: And --

6 THE COURT: Let me ask the State.

7 MS. HONCHAR: Sure.

8 THE COURT: Is there any dispute that you  
9 are talking about one vehicle here, Counsel?

10 MS. JOHNSON: I think I attached -- I don't  
11 know if the Court looked at the exhibits I attached,  
12 but I think it's very specific in the indictment and in  
13 Mr. McMonigal's admission as to which car we're talking  
14 about. He admits taking the VIN off of that particular  
15 vehicle. It's outlined in the report.

16 THE COURT: Can you -- can you give me a  
17 description of that vehicle?

18 MS. JOHNSON: Sure. Hold on. Let me look  
19 at the exhibits attached to my motion. I think  
20 probably the best description is --

21 THE COURT: Like the make, model, year, or  
22 something?

23 MS. JOHNSON: Yeah. He told me that he  
24 removed a VIN plate from the dashboard of the white  
25 truck in the back yard. And that white truck is



1 identified in Ellis' report.

2 If you can just give me one minute, Judge.  
3 (Reviewing documentation.)

4 I can't seem to find it right now, but I am  
5 looking. It's in the...

6 THE COURT: All right. Ms. Honchar, if we  
7 can all agree that we're talking about a white truck,  
8 in Mr. McMonigal's back yard -- was there more than one  
9 white truck back there?

10 MS. JOHNSON: There was a -- let's see.  
11 There was a gold and white truck, there was a brown  
12 truck, a primer gray, and one white Dodge pickup.

13 THE COURT: So are you talking about the  
14 Dodge, then?

15 MS. JOHNSON: I believe so. If I'm  
16 incorrect, I'll let Ms. Honchar know.

17 MS. HONCHAR: I was just going to say that  
18 rather than take the Court's time, I'm certainly sure  
19 Ms. Johnson will provide me with the name of the one  
20 and only vehicle to which this indictment --

21 THE COURT: All right. Well --

22 MS. HONCHAR: -- refers.

23 THE COURT: -- Ms. Honchar --

24 MS. JOHNSON: It's in the reports, Judge.

25 THE COURT: Ms. Honchar, if you can nail

1 down --

2 MS. HONCHAR: Sure.

3 THE COURT: -- the truck involved and the  
4 State agrees they're only talking about one truck, are  
5 you still going to argue that County Three should be  
6 dismissed?

7 MS. HONCHAR: No, sir. We have this --  
8 we'll just move forward with this.

9 THE COURT: All right. Thank you.

10 Let me take a look here, because I just  
11 found the pleadings on this issue. Maybe we can  
12 finally resolve it.

13 MS. JOHNSON: Oh, here it is, Judge. It  
14 says -- in Detective Ellis' report, it says the  
15 particular -- it's on page 7 of 9 of Ellis' report  
16 attached to my motion as Exhibit -- I believe it's  
17 Exhibit 1.

18 THE COURT: I'm on that page, Counsel.

19 MS. JOHNSON: And if you count down to --  
20 one, two -- the sixth paragraph that starts with that  
21 VIN, CCL146S, and then the paragraph continues to  
22 explain that that VIN was on a dismantled white pickup  
23 to the rear of the trailer. That dismantled vehicle  
24 had front dash removed and the parts were around the  
25 yard. The dash VIN was gone and Howard admitted to

1 Detective Plumb that he removed the dash VIN and placed  
2 it in a desk drawer in the trailer.

3 THE COURT: Ms. Honchar, does that clarify  
4 that point for you?

5 MS. HONCHAR: That -- if that's the only  
6 vehicle we are talking about in County Three, that  
7 satisfies me. And I thank you very much and  
8 Ms. Johnson.

9 THE COURT: Thank you, Counsel. So that  
10 resolves the motion to dismiss County Three.

11 Ms. Honchar, if you need --

12 MS. HONCHAR: Sir --

13 THE COURT: -- to amend the statement of  
14 charges as to County Three, I'm happy to entertain that  
15 request as well.

16 MS. HONCHAR: May I reflect upon that more  
17 carefully?

18 THE COURT: I'm sorry?

19 MS. HONCHAR: May I reflect upon that --

20 THE COURT: Sure. Sure. Sure. We'll come  
21 back here. You can do that any time.

22 MS. HONCHAR: Thank you, sir.

23 THE COURT: All right. Who is next?

24 MS. THORPE: Can I take a turn?

25 THE COURT: Yes, Ms. Thorpe. We didn't mean

1 to skip you if we did skip you.

2 MS. THORPE: You didn't. I'm actually going  
3 to bring up something that's not in writing, and that  
4 is to sanitize the fact that my client was unavailable  
5 because he was in prison.

6 THE COURT: Unavailable at what point in  
7 time?

8 MS. THORPE: I can tell you the specific  
9 dates at another time. They are in various motions  
10 that I have provided to the Court. But, generally  
11 speaking, they are he gets released in mid-June -- I  
12 want to say it's June 15th, 2007 -- and he is in  
13 custody September of '06 through June of '07. I can't  
14 give you the exact dates because, unfortunately, there  
15 were a few weeks in there where he did get released and  
16 then he got -- taken back into custody. So there's  
17 maybe a couple of weeks in that time frame.

18 THE COURT: So when you say "unavailable,"  
19 unavailable for what purpose?

20 MS. THORPE: Well, I do want to have an  
21 opportunity to ask witnesses -- for example,  
22 Jessica Foley -- whether my client was around the  
23 McMonigal trailer during certain times.

24 THE COURT: All right. Then you don't --  
25 you don't want her or anyone else to say well, no,

1 because he was at the joint?

2 MS. THORPE: That's it.

3 THE COURT: Okay.

4 MS. THORPE: That's it.

5 THE COURT: Well, then I'm going to grant  
6 that request. There's really no reason to mention that  
7 Mr. Rimer was not present or not free of custody during  
8 those time frames, that he was in prison at the Arizona  
9 State Prison or in custody at the county jail. And  
10 that applies to Mr. McMonigal as well. There's really  
11 no reason to mention that any defendant is in custody,  
12 unless there's a very specific circumstance that would  
13 justify that.

14 Mr. Wintory, are you standing up because you  
15 think there is?

16 MR. WINTORY: Well, I just want to -- I want  
17 to highlight the problem that the Defense has on this.  
18 Their primary use of the Defendants' -- the two  
19 Defendants' periods of incarceration are as a source of  
20 impeachment of our witnesses as to when or -- when  
21 events occurred that involved their clients. So they  
22 basically want to use the jail or the penitentiary as  
23 an alibi to impeach.

24 The difficulty is that they are going to  
25 have. And we have no problem with the Court's ruling,

1 but I just want to alert you to it, is if he's away on  
2 vacation or, you know, down in Nogales, then that's not  
3 very much of an alibi. So if they're -- so for them to  
4 actually be able to say --

5 THE COURT: All right. Well, actually, I  
6 appreciate that you want to alert the parties about  
7 this, but that's really their problem.

8 MR. WINTORY: Good enough.

9 THE COURT: So we'll just let them worry  
10 about it.

11 MS. THORPE: Thank you.

12 MS. HONCHAR: As the State did in the grand  
13 jury transcript which the Court has read, the fact that  
14 somebody is in prison is not brought to the  
15 grand jury's attention. And so what we will do is we  
16 will fashion something --

17 THE COURT: All right.

18 MS. HONCHAR: -- very similar and meets the  
19 same goals, sir.

20 THE COURT: All right. Thank you, Counsel.  
21 Ms. Thorpe, does that conclude your --

22 MS. THORPE: Yes, Judge.

23 THE COURT: -- motion? All right.

24 Let's see. Ms. Honchar, are you next?

25 MS. HONCHAR: Ms. Kellie -- I'm sorry --

1 Ms. Johnson -- excuse me -- I think there are some  
2 things we agree on. There were some housekeeping  
3 matters. We sort of, like, looked through those, and  
4 you said that...

5 MR. WINTORY: We've got three substantive  
6 motions still on the table.

7 MS. HONCHAR: Okay. There is a Brady motion  
8 that I have, and I...

9 THE COURT: All right. Is that a standard  
10 Brady motion or is there something --

11 MS. HONCHAR: No, it's not.

12 THE COURT: Okay. What is it?

13 MS. HONCHAR: My -- my request to the Court  
14 right now is that we not take up this matter at this  
15 time. There has been a lot of technological  
16 difficulties. I will say, although the prosecutors in  
17 this case --

18 THE COURT: Well, I don't think anyone is  
19 going to disagree if you don't want to take something  
20 up right now. Because I think we're going to run out  
21 of time anyway.

22 MS. HONCHAR: Okay. I'd like to --

23 THE COURT: So this your turn.

24 MS. HONCHAR: All right.

25 THE COURT: You pick one you want to take

1 up.

2 MS. HONCHAR: So I will defer this one.

3 THE COURT: Which one is it?

4 MS. HONCHAR: I'm deferring the Brady.

5 THE COURT: Okay. Which one do you want to  
6 go on?

7 MS. HONCHAR: Okay. Well, let's see. The  
8 jail calls. Oh. Well, let's see. Let's go to our  
9 motion -- my motion to preclude detectives from  
10 testifying as experts or offering opinion testimony.

11 THE COURT: All right. I'm with you,  
12 Ms. Honchar. Go ahead.

13 MS. HONCHAR: Thank you, Judge. Basically,  
14 Detective Musick is the case detective in this matter.  
15 He is primarily a broad investigator. That's where his  
16 expertise lies. In some cases there is a case  
17 detective -- it's a Mr. Keith St. John -- who is a  
18 highly experienced detective with knowledgeable of how  
19 various drug operations operate.

20 Detective Musick has some expertise as a  
21 drug recognition expert for the purposes of making  
22 traffic stops and in DUI's. And the State has not  
23 disclosed any experts as to how a drug operation is  
24 run, how -- the activities. This is frequently one of  
25 the things that the State elicits in a drug RICO case,



1 an enterprise case. And because Detective Musick as a  
2 case detective does not have that expertise, and there  
3 are a lot of other officers in this case who are theft  
4 guys, they do a variety of different things, but  
5 they've not been disclosed at any time within the  
6 60 days before trial, as experts, we're asking that the  
7 State be precluded from having some kind of an overall  
8 summary as this is how drug enterprises work.

9 THE COURT: All right. I understand you.

10 MS. HONCHAR: Thank you, sir.

11 THE COURT: Does the State wish to be heard  
12 on that?

13 MR. WINTORY: Well, I --

14 THE COURT: Well, Ms. Thorpe, are you  
15 joining in?

16 MS. THORPE: Yes, I have. And, actually --

17 THE COURT: All right. Ms. Thorpe has  
18 joined.

19 MS. THORPE: -- I did send Mr. Wintory --

20 THE COURT: Go ahead, Counsel.

21 MS. THORPE: -- an e-mail sort of related to  
22 this about disclosure of experts.

23 MR. WINTORY: You did?

24 MS. THORPE: This morning.

25 MR. WINTORY: Oh, this morning?

1 MS. THORPE: This morning. Just this  
2 morning.

3 MR. WINTORY: Okay. We have two folks who  
4 have specialized knowledge that fall under 702,  
5 Detective Coons, who bought the dope out of the  
6 McMonigal trailer on the date that we talked about  
7 yesterday, and Detective Spencer, who is identified in  
8 all the reports as the go-to guy with expertise  
9 relating to chop shops, stolen cars. He's the one that  
10 the detectives, who have participated in these  
11 warrants, called upon. He's clearly identified in the  
12 reports for his expertise in the manner in which cars  
13 are stolen, chopped, re-sold, and re-packaged. They've  
14 been clearly identified as -- as people with expertise.

15 We are not calling, we haven't disclosed, or  
16 intend to call -- Judge, I've tried cases against  
17 everybody in here against Ms. -- other than Ms. Thorpe.  
18 I've tried cases in front of you. So I use this only  
19 by illustration. You will know that in some cases, for  
20 example, we'll have Sergeant Morlock (phonetic) testify  
21 to overarching, here's how the world of dope works,  
22 drug trafficking out from the Republic of Mexico, the  
23 United States, those kind of overarching experts. We  
24 haven't disclosed them and intend to offer any of that  
25 kind of testimony. But the specifics of drug sales and

1 chopping cars that relates to the testimony of Coons  
2 and Spencer is disclosed. These fellows have been  
3 interviewed.

4 So I'm just -- I'm at a loss to figure out  
5 what this motion addresses. We're not planning on  
6 offering expert testimony related to sex offenses, as  
7 I've indicated in my motion. And so that which we  
8 intend to offer is clearly indicated in our disclosure  
9 of witnesses who have been interviewed.

10 MS. THORPE: And so that would also include,  
11 for example, Detective Ramirez --

12 MR. WINTORY: Right.

13 MS. THORPE: -- not giving us any, like,  
14 this is how sex victims act, this is what sex victims  
15 do.

16 MR. WINTORY: Right. I mean, obviously, we  
17 can all imagine lines of cross-examination that may  
18 open doors for that sort of thing, but as I have  
19 indicated in my motion, we do not plan, in our case in  
20 chief, to offer Detective Ramirez as a witness on -- on  
21 this sort of thing, or in our direct.

22 MS. THORPE: And what about Detective  
23 Ramirez as a medical doctor on what a --

24 THE COURT: Wait a minute. Wait a minute.  
25 He's not a doctor, right?

1 MS. THORPE: No.

2 MR. WINTORY: She's not.

3 MS. THORPE: Detective Ramirez is not a  
4 doctor.

5 THE COURT: She is not a doctor.

6 MS. THORPE: She is not a doctor.

7 THE COURT: Well --

8 MS. THORPE: And so is she going to offer  
9 any kind of medical testimony about what a taser wound  
10 looks like?

11 MR. WINTORY: Well, Judge...

12 THE COURT: Well, Ms. Thorpe, I don't know  
13 what a taser wound looks like, but some people that  
14 aren't doctors might know what they look like because  
15 they might have inflicted them or suffered from them or  
16 seen other people that --

17 MS. THORPE: And we --

18 THE COURT: -- that have.

19 MS. THORPE: We asked her about whether she  
20 had seen --

21 THE COURT: I don't know that this takes an  
22 expertise as opposed to just knowledge about tasers  
23 that might exceed what a normal person might have. So  
24 I'm not going to rule restricting police officers from  
25 talking about what they might know about a taser or a

1 taser wound.

2 MS. THORPE: If I can submit to you the  
3 excerpt of our interview with Detective Ramirez about  
4 the taser wound, because I think once you see it, you  
5 will conclude that she does not have the foundational  
6 knowledge. She's not seen a taser wound and there --

7 THE COURT: Well, those are all things that  
8 can be ruled upon at trial.

9 MS. THORPE: Okay.

10 THE COURT: They are foundational issues.  
11 Is there any issue with respect to Mr. Wintory's  
12 comments about his drug expert and Detective Coons and  
13 his car expert --

14 MS. THORPE: No.

15 THE COURT: -- Officer Spencer?

16 Ms. Honchar?

17 MS. HONCHAR: As long as we have these  
18 limits, sir, I am -- I am content.

19 THE COURT: All right. Thank you. We'll  
20 move on, then.

21 MS. HONCHAR: Thank you, sir.

22 THE COURT: Who is next? The State have  
23 another matter?

24 MS. JOHNSON: Judge, I think just -- I'm  
25 going through my remaining motions. I did file a

1 motion to limit the evidence of impeachment. I don't  
2 think -- I guess all I'm asking is for the Court to be  
3 mindful of my concerns and that, obviously, I've asked  
4 that impeachment be limited to appropriate evidence  
5 under 608 --

6 THE COURT: Oh.

7 MS. JOHNSON: -- and 609.

8 THE COURT: I remember that motion.

9 MS. JOHNSON: So you'll probably have to  
10 rule on that as questions come up.

11 THE COURT: All right. Well -- yeah. I  
12 don't know. Does the Defense need to be heard on this?

13 MS. HONCHAR: Your Honor, I -- I -- I  
14 suggest that -- well, here -- here are the facts --

15 THE COURT: Ms. Honchar, let me just tell  
16 you.

17 MS. HONCHAR: Sure.

18 THE COURT: I'm going to require that the  
19 parties follow the law, the rules of evidence, and I'm  
20 going to make rulings as needed.

21 Do you need to add anything?

22 MS. HONCHAR: She is charged in two --  
23 Ms. Kopp is charged in two other indictments as being a  
24 car thief.

25 THE COURT: All right. If somebody is

1 charged with an offense --

2 MS. HONCHAR: Yes.

3 THE COURT: -- you are going to need to have  
4 a specific ruling from the Court before you can ask  
5 questions about it, because a lot of people get charged  
6 and don't get convicted.

7 MS. HONCHAR: Well, in one she is convicted.

8 THE COURT: I'm sorry?

9 MS. HONCHAR: In one she is convicted.

10 THE COURT: All right. Well, let's talk  
11 about the convictions, then.

12 MS. HONCHAR: Yes. And it's car theft.  
13 And, of course, Ms. Kopp is the one who says that she  
14 is the principal.

15 THE COURT: Well, you know what the rules of  
16 evidence say about impeachment. Am I correct?

17 MS. THORPE: Right.

18 THE COURT: All right.

19 MS. THORPE: The other is --

20 THE COURT: We'll follow those rules.

21 MS. HONCHAR: Thank you so very much, sir.

22 But let me bring another matter to your  
23 attention if I may. She is named in an indictment, a  
24 subsequent indictment, that arises from facts occurring  
25 in April of 2008. And in this case --

1 THE COURT: That's Ms. Kopp?

2 MS. HONCHAR: Yes, this is Ms. Kopp.

3 And Ms. Kopp is -- this is another RICO  
4 enterprise, stolen cars. Ms. Kopp's name appears in  
5 the indictment; however, she is not --

6 THE COURT: In which indictment?

7 MS. HONCHAR: In this second indictment to  
8 which I am --

9 THE COURT: The other one?

10 MS. HONCHAR: -- referring.

11 MS. THORPE: The April --

12 MS. HONCHAR: Yeah, the April.

13 THE COURT: She's also in this one, right?

14 MS. THORPE: Right, exactly.

15 THE COURT: All right.

16 MS. THORPE: All right? So, similarly, as  
17 she is named in Count One but not named in the caption  
18 of the indictment and, therefore, not indicted, she is,  
19 in this second matter, which is presently pending and  
20 to which -- and in which she has given a free talk, she  
21 is named but, again, not indicted. And I think that  
22 that goes to her reason to provide -- it goes to her  
23 credibility. It's an offer of --

24 THE COURT: Has there been a -- has there  
25 been a deal made with her or some consideration



1 offered?

2 MS. HONCHAR: My understanding, sir, is,  
3 because I have another client in that case, that she  
4 has given -- that she -- she's not named as a  
5 defendant. I mean, it's the same thing here. She's  
6 not named a defendant.

7 MS. JOHNSON: Judge, I can clarify it.

8 THE COURT: Go ahead, Ms. Johnson.

9 MS. JOHNSON: The case that she has been  
10 convicted of that occurred after our indictment, in  
11 that case she pled guilty and --

12 THE COURT: I think that might have been in  
13 this courtroom.

14 MS. JOHNSON: It was.

15 And she pled guilty and agreed to testify as  
16 to the events in the enterprise that she's named in,  
17 having been involved in certain acts that the  
18 Defendants engaged in, but not as a defendant.

19 So the case that Ms. Honchar is talking  
20 about is still pending before -- I'm not sure if it's  
21 before you or another division, but her agreement in  
22 the other case was contingent upon her cooperation in  
23 the case that she's not a named defendant in. So  
24 that's how the two interact with one another.

25 THE COURT: All right. Well...

1 MS. JOHNSON: And I'm not --

2 THE COURT: Somebody who is a convicted  
3 felon can be impeached, and somebody who has received  
4 consideration in return for some cooperation, that's  
5 potential impeachment material as well.

6 Is that clear enough for the parties?

7 MS. HONCHAR: Thank you, sir.

8 MS. JOHNSON: Well, she didn't get any  
9 benefit in this case. She got a benefit in her  
10 other --

11 THE COURT: From the State of Arizona,  
12 right?

13 MS. JOHNSON: From the State of Arizona in  
14 another case, yes.

15 THE COURT: All right. Well, I think that  
16 that's, arguably, a basis for a bias on her part.

17 MS. JOHNSON: Okay. I mean, we'll have to  
18 see what kinds of questions they ask, because --

19 THE COURT: Sure.

20 MS. JOHNSON: -- the statement she gives in  
21 that case is very incriminating to these defendants.  
22 So we'll just see where it goes and make objections as  
23 the --

24 THE COURT: All right. Just be careful what  
25 doors you open, Counsel.

1 MS. HONCHAR: I certainly will. Thank you,  
2 sir.

3 THE COURT: Anything else on the impeachment  
4 motion?

5 MS. THORPE: No, Judge.

6 THE COURT: Thank you.

7 MS. HONCHAR: Now, there's -- Ms. Johnson,  
8 we had, I think, discussed this --

9 Ms. Thorpe, are you done?

10 MS. THORPE: I'm done.

11 MS. HONCHAR: Okay.

12 There's a motion to conclude (sic) evidence  
13 of good character. I agree.

14 MS. JOHNSON: We did it yesterday.

15 MS. HONCHAR: Oh, I'm sorry. I -- then it's  
16 my fault.

17 MS. THORPE: 609?

18 MS. HONCHAR: I don't have my 609. Do you  
19 have my 609?

20 Oh, this is -- oh, we have a 609 motion,  
21 your Honor, a motion in limine to preclude  
22 Mr. McMonigal's prior convictions. This is a standard  
23 609 motion.

24 THE COURT: Let me find that, Counsel.

25 MS. HONCHAR: Sure.

1 THE COURT: All right. I'm with you now.  
2 Go ahead.

3 MS. HONCHAR: Sure. I mean, it's --  
4 Mr. McMonigal has priors. And so --

5 THE COURT: And you are arguing that none of  
6 them should come in for impeachment purposes?

7 MS. HONCHAR: Well, I'm arguing that -- that  
8 you know, it -- yes.

9 THE COURT: Okay. I understand.

10 MS. HONCHAR: And -- and, basically, the old  
11 chief ruling here as to what -- you know, what is  
12 appropriate. Certainly not the nature of the prior  
13 allegations, you can say. There are ways in which to  
14 limit, and I know the Court is --

15 THE COURT: I understand that. So you are  
16 arguing that the priors should not come in, and if they  
17 do come in, that they should be sanitized.

18 MS. HONCHAR: Exactly.

19 THE COURT: Am I correct? All right.  
20 What's the State's position?

21 MR. WINTORY: Well, of course, the  
22 underlying conduct doesn't, so -- but if sanitizing  
23 doesn't make sense here, in light of the fact that  
24 we're not talking about minor offenses, but the  
25 probative nature of this is set out in the language I

1 quoted from the Arizona cases, Williams and Malloy  
2 (phonetic), is that they -- the probative value and  
3 credibility is on the theory that major crime entails  
4 such an integral disregard for the right of other  
5 persons, it can reasonably be expected the witnesses  
6 will be untruthful -- to his advantage.

7           So these are -- the defense convictions are  
8 for very serious crimes that show the sort of disregard  
9 for people, that it would reflect on his credibility  
10 and his motive and capacity to lie to his advantage.  
11 In this case, the seriousness of the crimes which he's  
12 done do exactly that.

13           The Defendant isn't entitled -- he's  
14 entitled to avoid unfair prejudice but he's not  
15 entitled to avoid those inferences reasonably that  
16 directly result from his criminal -- his past criminal  
17 activity.

18           THE COURT: All right. So there's -- we're  
19 talking about six prior felonies. Am I correct? Or is  
20 it five?

21           MR. WINTORY: I think it's --

22           THE COURT: Or five cases? Is that what it  
23 is? All right. So, Mr. Wintory, are you contending  
24 that all five of those felonies should be mentioned by  
25 specific name, or is there something that you think is

1 particularly probative here?

2 MR. WINTORY: Judge, the ones I worry -- I  
3 mean, I -- are the less serious. I think there's like  
4 a theft, Judge. Let me go through, where I've got my  
5 list in front of me. We have a count of illegally --  
6 that he's previously been convicted of. He's got a  
7 possession of a dangerous drug, aggravated assault with  
8 a deadly weapon, attempted theft by control, and  
9 controlling stolen property, priors that I believe you  
10 have.

11 THE COURT: Counsel, the -- I can tell by  
12 the CR number that the "possession of a dangerous drug"  
13 was from 2004. What about the earlier priors? What's  
14 the next newest one? The CR-55347? Do any of you  
15 know?

16 MS. HONCHAR: It was December 17th, I think.  
17 For some reason I remember that date.

18 THE COURT: Do you know the year? Because  
19 that's what I'm concerned about.

20 MS. HONCHAR: Well, your Honor -- if the  
21 Court does not wish to hear from me, I will be quiet.

22 THE COURT: Well, I asked the question, so  
23 if you know the answer --

24 MS. HONCHAR: I don't --

25 THE COURT: -- I'd appreciate it.

1 MS. HONCHAR: I don't have the -- there are  
2 other things I wish to say, but I'll -- I'll wait until  
3 the Court instructs me.

4 THE COURT: All right.

5 MS. THORPE: It might be in the allegation  
6 of prior conviction --

7 MR. WINTORY: This is what we're looking at.

8 THE COURT: I'm sorry. Ms. Thorpe, were you  
9 going to say something?

10 MS. THORPE: I thought it might be in the  
11 allegation of prior convictions attached to the  
12 indictment.

13 THE COURT: Thank you.

14 MS. JOHNSON: No, we generally don't put the  
15 date --

16 THE COURT: All right. So I'm notified by  
17 the clerk of the Court, who was kind enough to look  
18 this up, that the next newest one before 2004 was from  
19 1996. So I'm going to rule at this time that, at a  
20 minimum, the priors that are now more than ten years  
21 old will be sanitized if the Defendant is to be asked  
22 about them during the trial, should he testify. So  
23 that would be all of the priors except for the  
24 possession-of-a-dangerous-drug prior, which is  
25 CR-20043678.

1           As to the possession-of-a-dangerous-drug  
2 prior, I'm going to hold that matter in abeyance  
3 pending the development of the case so that I can weigh  
4 the probative value versus the prejudicial effect of  
5 it.

6           Anything further on the 609 motion by  
7 Mr. McMonigal?

8           MR. WINTORY: No, your Honor.

9           MS. HONCHAR: No.

10          THE COURT: Okay. Thank you.

11          MS. HONCHAR: I think Ms. Johnson and I --  
12 and I think this was actually in the context of the --

13          THE COURT: Ms. Honchar, is it your turn?

14          MS. HONCHAR: Oh, I'm sorry.

15          THE COURT: I don't think it is.

16          Ms. Johnson, is it your turn?

17          MR. WINTORY: No, we just took ours.

18          THE COURT: Okay. I thought that was  
19 Ms. Honchar's 609 motion that we talked about.

20          MS. HONCHAR: I think they took up the 609.

21          THE COURT: All right. Well, somebody go  
22 ahead.

23          MS. JOHNSON: Judge, I only have one more.  
24 And I think, preliminarily, it's my motion to amend the  
25 indictment based on the information Jessica Foley



1 provided in her deposition. And what I'd like to do is  
2 to just alert the Court. I've gone through your  
3 proposed charges, and based on the testimony at her  
4 deposition, the State needs to dismiss Counts -- these  
5 are the renumbered counts as the Court put them for  
6 trial -- 22 and 23, which are allegations of sexual  
7 assault occurring in September of 2007. Ms. Foley  
8 testified under oath at the deposition that she was  
9 confused and that nothing happened in September.

10 THE COURT: So you're moving to dismiss 22  
11 and 23?

12 MS. JOHNSON: Yes.

13 MS. HONCHAR: And, your Honor, I object.

14 THE COURT: You object?

15 MS. HONCHAR: Very.

16 THE COURT: All right. Well, I want to know  
17 why.

18 MS. HONCHAR: Oh.

19 THE COURT: Before -- before we go on, tell  
20 me why you object.

21 MS. HONCHAR: Okay. Well, because she  
22 has -- I mean, she has given all of these statements  
23 that --

24 THE COURT: Well, Ms. Honchar, you can  
25 always impeach a witness with her statements. And you

1 can even ask her, well, isn't it true that there was an  
2 indictment and that now these Counts 22 and 23 have  
3 been dismissed. But why do you really want to have 22  
4 and 23 go forward when the State is saying they don't  
5 have the evidence for it?

6 MS. HONCHAR: Because I need to show that  
7 this man was indicted based on --

8 THE COURT: You can -- you can --

9 MS. HONCHAR: -- statement --

10 THE COURT: -- show that.

11 MS. HONCHAR: Can I say that he was  
12 indicted?

13 THE COURT: Well, he was indicted. They're  
14 stating a factual --

15 MS. HONCHAR: All right. That he was  
16 indicted and the State dismissed?

17 THE COURT: Of course you can.

18 MS. HONCHAR: Okay. If I can say that the  
19 State indicted him -- well, wait a minute. Just -- may  
20 I consult with Ms. Thorpe just for one moment? This is  
21 a very serious issue.

22 (Brief discussion held off the record.)

23 MS. HONCHAR: Thank you very much. I needed  
24 to consult with a vastly experienced lawyer. And I  
25 just want to ask Mr. McMonigal.

1 THE COURT: If it's important, go ahead.

2 MS. HONCHAR: It is important.

3 (Brief discussion held off the record.)

4 THE COURT: And Ms. Johnson, we'll get back  
5 to you. I don't think you were done.

6 MS. JOHNSON: That's fine.

7 MS. HONCHAR: I've consulted with  
8 Mr. McMonigal, sir. As long as I can say that  
9 Mr. McMonigal was indicted on the charges that relate  
10 to March 2007 --

11 THE COURT: Wait a minute.

12 MS. THORPE: September.

13 MS. HONCHAR: I'm -- no.

14 THE COURT: We're talking about a different  
15 date.

16 MS. HONCHAR: It's March. It's actually  
17 March 2007.

18 MS. JOHNSON: It's September. I'm moving to  
19 dismiss --

20 THE COURT: September 2007.

21 MS. JOHNSON: -- September.

22 MS. HONCHAR: All right. So you're leaving  
23 in March.

24 MS. JOHNSON: Well, that's -- when I get to  
25 finish my motion, that's another --

1           THE COURT: We're not done. We're talking  
2 about Counts 22 and 23. There's been a motion to  
3 dismiss.

4           Are you objecting or not?

5           MS. HONCHAR: I am not.

6           THE COURT: Thank you.

7           MS. THORPE: With the caveat that I am able  
8 to --

9           THE COURT: All right. It's ordered, then,  
10 granting the State's motion to dismiss Counts 22 and 23  
11 as renumbered and, pertaining to Howard McMonigal and  
12 Jessica Foley, events of September 2007.

13          Go ahead, Ms. Johnson.

14          MS. JOHNSON: Judge, the second part of the  
15 motion was Ms. Foley -- and this part I don't mind  
16 holding in abeyance until Tuesday. I know I just got  
17 the transcript of Ms. Foley's deposition. It was  
18 approximately three hours in length. But my memory is  
19 that she did make some date corrections as to the  
20 counts. And we will be moving to amend -- basically,  
21 what she said, Judge, is, on the July counts, been  
22 broken up in July if you start with counts -- if you  
23 start with -- the Court has renumbered the Counts 17  
24 through 21. We had it broken up into two different  
25 incidents in July. She indicated, at her deposition

1 under oath, that there was only one time in July and  
2 couldn't pin it down anymore. So what I'd like to do,  
3 with the Court's permission, is to review her  
4 transcripts carefully, since it's been a couple weeks  
5 now, and propose specific amendments to the Court  
6 either on Monday afternoon or Tuesday morning before we  
7 get started.

8           There will also be an issue. I am moving to  
9 amend Counts 15 and 16 to May of 2007 instead of March.  
10 And I'd like to explain to the Court how that happened.  
11 In Ms. Foley's interview with Detective Ramirez, she is  
12 making the statement in October. And what Jessica  
13 Foley says is that the first time she had -- you know,  
14 that she was assaulted or forced to engage in sexual  
15 intercourse with Howard McMonigal, was about five  
16 months ago.

17           It is then Olga Ramirez who continually  
18 refers to that incident as occurring in March. And  
19 Jessica Foley had actually always said five months ago,  
20 which would put it in May. That is what she testified  
21 to under oath at the deposition as well.

22           So the error in March was the detective  
23 making the error in the math, subtracting five months  
24 from October. I think it's clear, based on the  
25 deposition, what incident she's talking about. So I

1 would ask to amend Counts 15 and 16 to May as opposed  
2 to March and then come back to the Court with some  
3 clarification on the July counts based on the sworn  
4 testimony subject to cross-examination she provided at  
5 the deposition.

6 THE COURT: All right. Thank you.

7 MS. HONCHAR: I would like -- if I may  
8 respond, sir.

9 THE COURT: Yes, ma'am.

10 MS. HONCHAR: When the State attempted to do  
11 this the last time, the Court said that it was not  
12 going to entertain any of these motions and that the  
13 State was untimely. That's one.

14 THE COURT: I don't recall that.

15 MS. HONCHAR: Well, I --

16 THE COURT: Was there a motion to amend?

17 MS. HONCHAR: Yes, there was. Yes. And the  
18 Court -- and there was that, along with a motion to --

19 THE COURT: Well, that was an entirely  
20 different kind of a motion, Ms. Honchar. Wasn't that  
21 the motion to consolidate an --

22 MS. HONCHAR: There were two motions.

23 THE COURT: -- an old case -- a new case  
24 with this old case?

25 MS. HONCHAR: There were two motions, sir.

1 THE COURT: What was the other one?

2 MS. HONCHAR: It was this motion to amend.

3 MR. WINTORY: No.

4 MS. JOHNSON: No.

5 MS. THORPE: As to Ms. Foley.

6 THE COURT: I don't recall --

7 MS. THORPE: That's --

8 THE COURT: I don't recall ever hearing this  
9 request before.

10 MS. HONCHAR: Perhaps -- well, then I -- my  
11 recollection is erroneous and I withdraw my objection.

12 Olga Ramirez was very, very clear and -- in  
13 her examination of Ms. Foley as to when these events  
14 occurred. She asked Ms. Foley specifically did  
15 anything happen after March; that is, in April, May,  
16 and June. Very clearly, Detective Ramirez was never  
17 confused. She was never confused. And it is Ms. Foley  
18 who is giving, in her recanted -- substantially  
19 recanted testimony under oath, that oh, well, the  
20 detective was confused. And I think it is  
21 inappropriate.

22 This substantially changes the nature of the  
23 allegation -- those allegations in the complaint  
24 concerning the March incident. Ms. Foley was never --  
25 Detective Ramirez was not confused. And he had

1 Detective Ramirez's transcript. I have it. I would  
2 ask the Court that --

3 THE COURT: I don't think anyone is  
4 disputing what Ramirez said.

5 MS. HONCHAR: And Ramirez said it happened  
6 in March.

7 THE COURT: Right.

8 MS. HONCHAR: But she's also saying --

9 THE COURT: But she wasn't there. So tell  
10 me how it prejudices your client. Was there an alibi  
11 defense or something?

12 MS. HONCHAR: It is part of the whole  
13 impeachment that --

14 THE COURT: All right. Well, you'll have  
15 more impeachment now. You have more impeachment  
16 because you have Detective Ramirez saying that she  
17 heard or understood that these events took place in  
18 March, and now you have a change in that.

19 I'm going to allow you to talk about the  
20 fact that this -- these two counts were originally  
21 charged as March of '07.

22 MS. HONCHAR: Thank you very much, sir. As  
23 long as I have --

24 THE COURT: I'm going to grant the State's  
25 request to amend Counts 15 and 16 so that the alleged



1 offense date is May of '07 instead of March of '07 as  
2 to both counts.

3 Ms. Johnson, anything else at this time?

4 MS. JOHNSON: No. All done. May I come  
5 back to the Court on -- and I don't know if we're  
6 getting back --

7 THE COURT: And you said you were going to  
8 come back as to Counts 17 through 21.

9 MS. JOHNSON: Well, what will most likely  
10 happen is that some of them will be dismissed and  
11 merged together based on the deposition. I just wanted  
12 to do it prior to telling the Court exactly what she  
13 said.

14 THE COURT: I'm going to urge the parties  
15 to discuss what the State's intent is, to see if  
16 anything can be agreed to with respect to Count 17  
17 through 21.

18 Anything else, Ms. Johnson?

19 MS. JOHNSON: No, Judge. I believe that  
20 completes all of our motions. We did have a motion  
21 that we filed for disclosure. Ms. Thorpe complied with  
22 our request. Ms. Honchar did not but also indicates  
23 she is not calling anybody. That would be the subject  
24 of our motion.

25 THE COURT: All right. So you're

1 withdrawing your motion for disclosure at this time?

2 MS. JOHNSON: For now, unless Ms. Honchar  
3 brings something up that we've asked for and didn't  
4 get.

5 THE COURT: All right. Thank you.

6 MS. HONCHAR: There are a couple of  
7 housekeeping things that we --

8 MR. WINTORY: Well, you've still got the  
9 substantive motion in limine to preclude referring to  
10 our victims as victims.

11 MS. HONCHAR: Right.

12 THE COURT: All right. Let's take that up.  
13 It makes sense to resolve that issue now. Let me find  
14 it here.

15 MS. THORPE: It's my motion, sir.

16 THE COURT: All right. I read the motion.  
17 I read the opposition.

18 Ms. Honchar, anything you need to add?

19 MS. HONCHAR: Is there anything the Court  
20 wishes to know of me?

21 THE COURT: Go ahead.

22 MS. HONCHAR: I -- I -- no.

23 THE COURT: You said "no"?

24 MS. HONCHAR: I mean, if you have any  
25 additional --

1 THE COURT: Oh.

2 MS. HONCHAR: -- questions of -- I would --  
3 I think if the matter's been briefed --

4 THE COURT: Well, I'm going to -- does the  
5 State want to be heard?

6 MR. WINTORY: Judge, I'll respond to any  
7 question the Court has, but I think we did it on the  
8 brief.

9 THE COURT: All right. Ms. Thorpe, is this  
10 one you had joined in?

11 MS. THORPE: Yes, I did. I have nothing to  
12 add.

13 THE COURT: Okay. Thank you. Let's see.  
14 And I guess the motion says you don't want these folks  
15 referred to as victims. Is there any problem with them  
16 being referred to as alleged victims?

17 MR. WINTORY: You bet. You bet.

18 THE COURT: All right. Well, whatever that  
19 problem is, I'm going to order that the motion is  
20 granted to the extent that there are only alleged  
21 victims. Until it's proven, until the jury decides  
22 that they are actual victims, then they are alleged  
23 victims and they can be referred to as alleged victims,  
24 not as victims.

25 MR. WINTORY: Well, Judge, I appreciate the

1 Court going to -- and the Court, I know, is mindful of  
2 the -- of the case law that we cited, as well as the  
3 statutory constitution definition of "victims."

4 THE COURT: Do you have some case in here,  
5 Mr. Wintory, that says that the State is entitled to  
6 call someone a victim when the Court is proffering that  
7 they should be called alleged victims?

8 MR. WINTORY: Right, Judge. We cited --

9 THE COURT: What case is that?

10 MR. WINTORY: The Ninth Circuit case that we  
11 cited makes the point that the --

12 THE COURT: Well, I want to know if there's  
13 a specific holding that says what I'm ordering here is  
14 wrong. Are you telling me there is?

15 MR. WINTORY: Well, there's never going to  
16 be a case that clear.

17 THE COURT: Well, there might be. There's a  
18 lot of specific holdings out there. Do you know of one  
19 on this point?

20 MR. WINTORY: Your Honor, that -- this is  
21 the issue that the Court addressed in Gwaum (phonetic),  
22 whether or not an indictment, with all the other  
23 instructions you are going to give, that these are  
24 charges and allegations the Defendant is presumed  
25 innocent. So it would be like saying the defendant is

1 the alleged defendant, or the crime is the alleged  
2 crime.

3 THE COURT: Well, not quite. I think that  
4 the point is well taken that when you start calling  
5 someone a victim, it implants a certain seed in the  
6 hearer's mind. And what these are are allegations.  
7 Until they are proven, there are no victims.

8 MR. WINTORY: And Judge --

9 THE COURT: There are defendants because a  
10 defendant is someone who is accused, either by a  
11 preliminary hearing or an indictment. They are  
12 defendants. They are not alleged defendants.

13 MR. WINTORY: There -- the --

14 THE COURT: There's a difference there.

15 MR. WINTORY: Certainly is.

16 THE COURT: So my ruling will stand.

17 MS. HONCHAR: Thank you, sir.

18 Ms. Johnson and I have agreed on the motion  
19 in limine as to the jail calls.

20 And then as a final housekeeping matter,  
21 sir, in order to expedite the trial of the case, I had  
22 asked the State to give us a specific list of the  
23 witnesses that it intends to call and the order and the  
24 anticipated time. I have found in other cases before  
25 other courts that if we've got a kind of a timetable,

1 it really moves things along. Sometimes police  
2 officers get called in and out.

3 THE COURT: Ms. Honchar, I'm not going to  
4 grant that motion. What I'm going to do is ask the  
5 parties to cooperate as much as possible. And I see  
6 this a lot, without even Court intervention, that the  
7 parties cooperate extensively on who they are going to  
8 call first and what witnesses they might anticipate on  
9 a given day and whether or not witnesses can be called  
10 out of order.

11 I would anticipate that all of you, as  
12 professionals, can cooperate. I'm not going to say to  
13 some side or the other that you have to give us an  
14 itinerary that is specific as to what order you are  
15 calling folks in throughout the trial, how long they  
16 are going to take, and who you are going to call the  
17 next day and the next day and the next day. These are  
18 vagaries of litigation that don't allow such  
19 precision, so I'm not going to issue that order.

20 Mr. Wintory or Ms. Johnson, do you know who  
21 your first witness in the trial is going to be?

22 MR. WINTORY: We were going to get through  
23 these motions and spend our Thanksgiving cutting that  
24 up along with the turkey, but our intention is, is that  
25 we're going to provide these folks, as soon as we have

1 it, with a lineup as a rough measure, and we'll adjust  
2 it as we go along. But we don't have that right now.

3 MS. HONCHAR: Sir, I'd just like to --

4 THE COURT: All right. Have you got an idea  
5 who your first group is going to be?

6 MS. JOHNSON: We've discussed that. Most  
7 likely, depending on schedules, because we haven't  
8 nailed anything down with the witnesses yet, that are  
9 first group of folks would deal generally with the  
10 various stolen vehicles that were recovered on the  
11 property. So --

12 THE COURT: So that's going to be mostly  
13 police officers and/or alleged victims of stolen cars?

14 MS. JOHNSON: The owners of the stolen cars,  
15 the responding officers to those incidents, ultimate --  
16 and then leading up to the warrant of August. So that  
17 would be the first general group of people. But we'll  
18 be much more specific by the weekend, probably.

19 MS. HONCHAR: Great.

20 THE COURT: All right. Thank you.

21 MS. HONCHAR: I wasn't trying to manage  
22 the -- the courtroom. It's just that --

23 THE COURT: I understand, Ms. Honchar. I  
24 understand what you were trying to do. And I fully  
25 respect your efforts. You want to be helpful. You

1 want to represent your client. And so I'm going to try  
2 to accommodate all the parties as much as I can here  
3 and as fairly as I can.

4 At this point, you have been advised that  
5 the first group of witnesses is going to involve the  
6 stolen vehicles. I'm sure that if you ask the  
7 prosecutors who they are going to call as their second  
8 group, once they figure that out, they'll tell you  
9 that.

10 MS. HONCHAR: And I -- and I understand  
11 that. And I avow to the Court that I will do my very  
12 best to give the State my list of witnesses and the  
13 order of witnesses.

14 THE COURT: Thank you, Counsel. Are there  
15 any other witness -- I'm sorry -- any other motions we  
16 need to take up at this time?

17 MS. HONCHAR: No.

18 MS. JOHNSON: I don't think so.

19 THE COURT: Was there a motion for  
20 Mr. McMonigal's -- well, for both defendants for a  
21 material witness undertaking?

22 MS. THORPE: No. Remember, Judge, I had --

23 THE COURT: That's gone?

24 MS. THORPE: We resolved that. We did, in  
25 fact, resolve that.



1           So we're going to be doing Tuesday through  
2 Friday, 10:30 to noon --

3           THE COURT: Approximately.

4           MS. THORPE: -- 1:30 to --

5           THE COURT: And let me just alert you all,  
6 for planning purposes, that we will not be holding  
7 court between Christmas eve and New Year's day.

8           MS. THORPE: I sure hope we're done with  
9 this case before then, Judge.

10          MS. JOHNSON: Does that include the  
11 actual -- the whole day of the -- so we won't be in  
12 session on the 24th at all, or...

13          THE COURT: Right. I'm not planning on  
14 being here.

15          MS. THORPE: And then what was the other --  
16 what was the other --

17          THE COURT: Is that okay with all of you?

18          MS. THORPE: Yes.

19          MS. HONCHAR: Oh, no. I object your Honor.

20          MS. THORPE: I'm sorry. What were the other  
21 times in case we still are here after Christmas? What  
22 was the --

23          THE COURT: Between Christmas eve --  
24 actually, including Christmas eve and all the way  
25 through New Year's Day.

1 MS. THORPE: All right.

2 THE COURT: Which is a court holiday anyway.

3 Let me also alert you that I will be out for  
4 a medical issue starting at 4:30 on Tuesday the day we  
5 start this trial. So however far we get, at 4:30 I  
6 will have to stop at that point. In addition to that,  
7 another medical appointment I'll have to leave here for  
8 at 1:30 p.m. This is December 10. And if I get back,  
9 it will be late in the day. So perhaps December 10, if  
10 I get back, we can resolve some issues that don't  
11 require the jury to be present so that I -- once I let  
12 them go, they don't have to wait around and come back  
13 at 3:30 and then just work another hour and a half or  
14 so.

15 MS. THORPE: So we would do maybe the  
16 morning of December 10?

17 THE COURT: Correct.

18 MS. JOHNSON: Judge, as to the 10th, I was  
19 actually going to ask. It's by no means something  
20 that's absolutely necessary, but I'm going to Phoenix  
21 that night. My ride is --

22 THE COURT: That night?

23 MS. JOHNSON: That night. My ride is  
24 picking me up as soon as you let me out of court. Our  
25 preference is that we're able to hit the road by about

1 4:00 or 4:15. So it might work out well.

2 THE COURT: Well, that means, then, that we  
3 could just take that afternoon off, if there's no  
4 objection.

5 Is there any objection to that?

6 MS. THORPE: No.

7 THE COURT: Actually, Ms. Johnson, is it  
8 something that if we needed to do something that we  
9 wouldn't have the jury around for, that Mr. Wintory  
10 could take care of it?

11 MR. WINTORY: Sure.

12 MS. JOHNSON: Absolutely.

13 THE COURT: Okay. So, Ms. Johnson, you are  
14 free to leave.

15 Is one of you head counsel and one of you  
16 second chair?

17 MS. JOHNSON: We're partners.

18 THE COURT: Okay. You're 50/50, then.

19 MS. JOHNSON: It is both of our faults.

20 THE COURT: Ms. Johnson, just be careful  
21 that if you are not present -- well, both of you, if  
22 you are not present for any of the jury proceedings,  
23 you may run into difficulty providing closing  
24 statements. Okay?

25 And we can all agree that we won't have jury

1 proceedings on the afternoon of December 10.

2 MS. THORPE: How far are we telling the jury  
3 that they need to be available --

4 THE COURT: That's a good question, and I  
5 was going to ask you all that today as well. Do they  
6 need to plan on coming back for 2009?

7 MS. HONCHAR: Your Honor, could I suggest  
8 something along these lines? If the Court is going to  
9 give New Year's -- Christmas eve off --

10 THE COURT: I am.

11 MS. HONCHAR: Okay. That -- that's asking  
12 them to come back just on the 23rd. You know, that's  
13 that one Tuesday.

14 THE COURT: Well, unless you all wanted to  
15 hold trial court on Monday the 22nd. But oftentimes  
16 juries come back for a day at a time. I mean --

17 MS. HONCHAR: Okay. That's fine.

18 THE COURT: It's not like they're flying in  
19 from New York for a day trip.

20 MS. HONCHAR: Whatever. It's just  
21 Christmas, and folks like to, you know, enjoy  
22 Christmas.

23 THE COURT: Do you -- I don't have anything  
24 set for December 22. Do any of you want to hold court  
25 that day?

1 MS. THORPE: Can we wait and see how we're  
2 moving along? I mean, if it starts --

3 THE COURT: Sure.

4 MS. THORPE: -- to look like we could finish  
5 up before Christmas, then we may want to press forward.  
6 Whereas -- or we may want to set -- that might be a  
7 deliberation day for them.

8 THE COURT: Well, then I would suggest that  
9 all of you keep that December 22 date open just in case  
10 we need it.

11 MS. THORPE: So are we going to tell them,  
12 though, that they need to be available to us through  
13 mid-January? I mean, is that --

14 THE COURT: Well, you all tell me. What do  
15 you all think about that?

16 MS. JOHNSON: Judge, did you intend -- and  
17 I'm sorry if I -- if you said this and I misunderstood.  
18 Would we be coming back on Friday the 2nd if --

19 THE COURT: That would be my plan. I mean,  
20 it's another day that we have. There's really no good  
21 reason not to use it.

22 MS. JOHNSON: Sure. I think to be safe we  
23 could qualify them through that, what is it, the week  
24 of the 4th or 5th, that first full week in January.

25 THE COURT: First full week of January?

1 MS. JOHNSON: To be absolutely safe.

2 THE COURT: Which would be January 5 through  
3 January 9. So are you suggesting they be qualified  
4 through January 9, Counsel?

5 MS. THORPE: That makes sense.

6 MS. JOHNSON: That's my suggestion.

7 MS. THORPE: I hope we're not here that  
8 long.

9 THE COURT: Anyone disagree with that?

10 MS. THORPE: No.

11 MS. JOHNSON: And hopefully they'll all  
12 think we're heroes when we end early.

13 THE COURT: Right. That's erring on the  
14 side of caution, I hope, so that if we get done  
15 quickly, or more quickly, that they, as you say, are  
16 happy, as opposed to qualifying them only perhaps  
17 through December and then them being upset because they  
18 made plans based on that.

19 MS. JOHNSON: All right. So you'll just  
20 tell them we've agreed the 24th through the 2nd, is  
21 all, or through the 1st.

22 THE COURT: Through the 1st. And then we'll  
23 come back on January 2nd.

24 MR. WINTORY: Okay. Judge, do you think  
25 we'll be working on the Mondays, like Monday,

1 December 8; Monday, December 15th?

2 THE COURT: I generally don't. And right  
3 now I'm booked on those afternoons for law-and-motion  
4 hearings. But I am open on December 22.

5 MR. WINTORY: Okay.

6 THE COURT: And I will keep that open. And  
7 if you all can keep that open, we'll have a little bit  
8 of extra time there in case we need it.

9 MR. WINTORY: Okay.

10 MS. JOHNSON: Great.

11 THE COURT: So I'll qualify the jury through  
12 January 9, 2009.

13 Ms. Honchar, you wanted to keep your Brady  
14 motion in abeyance, and I'm happy to do that.

15 MS. HONCHAR: Thank you, sir.

16 THE COURT: Let me make sure that there  
17 isn't anything else that is left unfinished, Counsel.

18 MS. HONCHAR: I think we're done.

19 THE COURT: Let me take a look here, please.

20 MS. JOHNSON: Judge, while you're checking,  
21 can I have a word with the clerk about something?

22 THE COURT: Sure.

23 (Brief discussion held off the record.)

24 THE COURT: Counsel, back on the record  
25 here. There was a motion by Ms. Honchar requesting

1 that the Court call certain witnesses, specifically  
2 Detective Musick, Detective Ramirez, and  
3 Leticia Knudsen.

4 MS. HONCHAR: And --

5 THE COURT: Ms. Honchar, are you still  
6 proffering that motion?

7 MS. HONCHAR: No, I'm not. Ms. --

8 THE COURT: All right. That motion is  
9 withdrawn.

10 MS. HONCHAR: -- Johnson --

11 THE COURT: Thank you.

12 MS. HONCHAR: -- wanted me to --

13 THE COURT: I don't need any further  
14 explanation. You have withdrawn it.

15 Anything further, Counsel?

16 MS. HONCHAR: No.

17 THE COURT: So Ms. Honchar, we still have  
18 your Brady motion, and you will need to remind us if we  
19 need to address it. Otherwise --

20 MS. HONCHAR: Certainly.

21 THE COURT: -- it will be considered  
22 withdrawn.

23 Anything further before we recess for the  
24 evening?

25 MR. WINTORY: No, your Honor.



1 MS. JOHNSON: Oh, I'm sorry. One quick  
2 question. Donna had left me a message that she was  
3 working on preliminary jury instructions.

4 THE COURT: She is.

5 MS. JOHNSON: Do you provide definitions of  
6 the crimes in the opening, in the preliminary  
7 instruction?

8 THE COURT: I don't.

9 MS. JOHNSON: Okay. Because she had asked  
10 for me to provide her with a couple of ones that she  
11 didn't have --

12 THE COURT: For preliminaries?

13 MS. JOHNSON: No.

14 THE COURT: That would be for finals.

15 MS. JOHNSON: Because I didn't know if she  
16 needed it for Tuesday morning.

17 THE COURT: No, she doesn't.

18 MS. JOHNSON: Okay.

19 MS. THORPE: Do we know, is there a RAJI on  
20 "enterprise"?

21 THE COURT: I don't know, Counsel. But I'm  
22 happy to entertain your request for jury instructions  
23 as well.

24 All of you have a nice holiday.

25 MS. THORPE: So if we have a preliminary

1 instruction for you, we can get it to you like Monday?

2 THE COURT: Sure.

3 MS. THORPE: Okay. Great.

4 (Whereupon, the proceedings concluded.)  
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## C E R T I F I C A T E

STATE OF ARIZONA     }  
COUNTY OF PIMA       } ss.

I, KATHRYN A. LORENZ, Certified Reporter  
No. 50738, do hereby certify that I reported the  
foregoing proceedings to the best of my skill and  
ability; that the same was transcribed by me via  
computer-aided transcription; and that the foregoing  
pages of typewritten matter are a true, correct, and  
complete transcript of the proceedings had as set forth  
in the title page hereto.

DATED this 19th day of October, 2009.

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KATHRYN A. LORENZ, RPR  
Certified Reporter No. 50738  
Pima County Superior Court